(9)

No. 03-1160

Supreme Court, U.S.
FILED
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IN THE

Supreme Court of the United States

Azel P. Smith, *et al.*,
Petitioners,

v.

City of Jackson, Mississippi, and
Police Department of the City of Jackson, Mississippi,
Respondents.

On Writ of Certiorari
to the United States Court of Appeals
for the Fifth Circuit

JOINT APPENDIX

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PETITION FOR CERTIORARI FILED FEBRUARY 11, 2004
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U.S. Court of Appeals
for the Fifth Circuit

CIVIL DOCKET FOR 02-60850
Smith, et al v. City of Jackson MS, et al

AZEL P SMITH; JACQUELINE BUTLER; RUTHIE PORTER; GLORIA BURNS; WILLIE ALLEN; ET AL
Plaintiffs – Appellants
v.
CITY OF JACKSON, MISSISSIPPI; POLICE DEPARTMENT OF THE CITY OF JACKSON, MISSISSIPPI
Defendants – Appellees

10/14/02	Civil rights case docketed. NOA filed by Appellant Azel P Smith, Appellant Jacqueline Butler, Appellant Ruthie Porter, Appellant Gloria Burns, Appellant Willie Allen, Appellant Et Al. [02-60850] (trm)
11/13/03	Opinion filed. Issd in T form? Y Mandate pull date is 12/4/03. [02-60850] (kgc)
3/29/04	Supreme Court order received granting petition certiorari [4754429-1] by Appellant Azel P Smith, Jacqueline Butler, Ruthie Porter, Gloria Burns, Willie Allen, Et AL on 03/29/04. [02-60850] (dse)

U.S. District Court
for the Southern District of Mississippi

CASE #: 01-CV-367
Smith, et al v. City of Jackson, et al

5/14/01		COMPLAINT Filing Fee $150.00 Receipt #3996; jury demand; Notice of Assignment mailed. (ihc) [Entry date 05/15/01]
6/19/01		ANSWER to Complaint by defendant City of Jackson, defendant Jackson Police Dept. (Attorney J. Anthony Williams), (cwl) [Entry date 06/19/01]
9/6/02	78	JUDGMENT for defendant City of Jackson, defendant Jackson Police Dept. against all plaintiffs and this cause is dismissed with prejudice. (signed by Judge William H. Barbour Jr.); copies mailed. ob 2002 page 2944 (jlh) [Entry date 09/10/02]
3/15/04	86	ORDER; that in an opinion and order rendered by the undersigned on 9/6/02, defendants' motion for summary judgment was granted; on the same day a final judgment was issued dismissing case with prejudice, plaintiffs appealed to the U.S. Court of appeal; that in a Report of 1/13/04, plaintiffs informed the Court that all parties agreed to a stay; that this cause Stayed pending a decision by the U.S. Supreme Court on plaintiffs' Petition or Writ of Certiorari (signed by Judge William H. Barbour Jr.); copies mailed and certified copy to USCA. (sec) [Entry date 03-16-04] [Edit date 04/15/04]

COMPLAINT
INTRODUCTION

This action seeks all legal remedies for age discriminatory pay disparities, including front pay, back pay, compensatory damages and injunctive relief for the unlawful actions of the Defendants the City of Jackson and the City of Jackson Police Department in implementing across the board salary policies impacting against Plaintiffs solely because of their age, in violation of the Age Discrimination in Employment Act of 1967, 29 U.S.C. Section 621 *et seq*.

JURISDICTION

1.

Jurisdiction is conferred by the Age Discrimination in Employment Act of 1967, 29 U.S.C. Section 621, *et. seq*., and 29 U.S.C. Section 216.

PARTIES

2.

Plaintiffs Azel P. Smith, Jacqueline Butler, Ruthie Porter, Gloria Burns, Willie Allen, Joe L. Austin, Jerry Brister, Harvey L. Davis, William H. Gladney, Sr., Tommie L. Grant, Ned Garner, William R. Gardner, Samuel Haymer, James J. Howard, Warren E. Hull, Thomas Hunter, Arlander LuAllen, Jr., Willie Mack, Eugene McDonald, Carey N. Parkinson, Cleotha Ratliff, John M. Russell, David L. Shaw, Wayne Simpson, Jr., Richard J. Smith, Kenneth W. Stemmons, James B. Strawbridge, Alphonso Taylor, Miller Weston, and Shirley Williams are adult resident citizens of Hinds County, Mississippi.

3.

At all times material hereto, Plaintiffs have been at least forty (40) years of age, and are therefore within the protected class of persons under the ADEA.

4.

At all times material herein, Plaintiffs have been or were employees of the Defendants within the meaning of the Age Discrimination in Employment Act, 29 U.S.C. 630(F), who were and are qualified for his or her positions.

5.

The Defendants, City of Jackson, Mississippi and its Police Department are employers within the meaning of the Age Discrimination in Employment Act of 1967, 29 U.S.C. 630(b).

FACTS

6.

The Plaintiffs are long term, successful members of the City of Jackson, Mississippi Police Department and/or employees of the City of Jackson, Mississippi, serving as investigators, dispatchers, traffic patrolmen, administrative investigators, or patrol personnel.

7.

Plaintiffs have over the years of their employment, received promotions, raises, and step pay increases, commendations and awards for merit.

8.

In or about March 1999, the Defendants approved and began implementing a revised pay scale for its employees, including the Plaintiff dispatchers and police officers, which plan was reputed to seek to achieve salary increases to, *inter alia*, "attract and retain qualified people," "maintain competitiveness with other public sector agencies," and "provide incentive for performance".

9.

The actual effect of the said pay plan was to increase the pay for younger workers at the expense of the officers and employees who were over 40 years of age.

10.

This discriminatory policy of the defendants in the City of Jackson were set forth in the Revised Performance Pay Plan made a part of the Policy and Procedure maintained by the Department of Personnel Management of the City of Jackson, Mississippi.

11.

Plaintiffs Azel Smith and Jacqueline Butler, individually and on behalf of a class of similarly situated employees within the protected age group (forty and over), and each of the Plaintiffs herein, individually, filed charges of discrimination with the Equal Employment Opportunity Commission.

12.

As a result, on or about March 31, 2000, the Equal Employment Opportunity Commission by and through a Determination issued by Benjamin Bradley, Area Director, made findings against the City of Jackson and its Police Department and invited the City to participate in conciliation efforts. True and correct copies of said Determinations for the employees, police officers, and dispatchers are annexed hereto as Exhibit "A" and "B" respectively.

13.

The United States Equal Employment Opportunity Commission found that the City of Jackson, Mississippi and the City of Jackson, Mississippi Police Department were employers within the meaning of the Age Discrimination in Employment Act.

14.

The Equal Employment Opportunity Commission found that the defendants had instituted a city-wide pay plan which adversely impacted the Plaintiffs in that the pay plan did not initially consider seniority or performance, as had been used previously when wage increases were granted.

15.

The Equal Employment Opportunity Commission found that the new pay plan initially offers more substantial wage increases to non-protected age group members regardless of seniority or performance level, and that this type of action is in direct violation of the Age Discrimination In Employment Act, in that employees in the protected age group are adversely affected because of age by an employment action with respect to disparate wage increases.

16.

The Equal Employment Opportunity Commission conciliation efforts proved futile.

17.

On or about February 16, 2001, the Equal Employment Opportunity Commission found cause for the Plaintiffs herein in the Age Discrimination in Employment Act charge filed by Plaintiffs. A true and correct specimen copy of said Right to Sue letter as issued to each individual Plaintiff by the Equal Employment Opportunity Commission is annexed hereto and incorporated herein as Exhibit "C."

18.

Plaintiffs have therefore fully complied with the exhaustion provisions of the Age Discrimination in Employment Act at 29 U.S.C. Section 626(d).

19.

Defendants, by their actions, have willfully, intentionally, purposely, maliciously, and with reckless indifference to Plaintiffs' federally protected right to be free from discrimination due to age, discriminated against Plaintiffs, with respect to their compensation, terms, conditions and privileges of employment, because of their age, in violation of the Age Discrimination in Employment Act, justifying an award of twice Plaintiffs' back pay (including all fringe benefits).

20.

As a result of the aforesaid described actions of the Defendant, the Plaintiffs have sustained and will continue to sustain in the future, irreparable harm for which there is no adequate remedy at law, and substantial monetary damages. Said monetary damages include damages for back pay (including all fringe benefits), front pay (including all fringe benefits) and injunctive relief ordering Plaintiffs be given pay raises commensurate with their seniority, experience and performance.

CAUSE OF ACTION

21.

The acts of the Defendant in discriminating against Plaintiffs because of their age constitutes a willing, knowing and intentional violation of Plaintiffs' rights prohibited by the Age Discrimination in Employment Act. 29 U.S.C. Section 621, *et. seq.*

RELIEF

22.

WHEREFORE, Plaintiff prays that this Court will take jurisdiction of the parties and the subject matter and grant the following relief:

(a) A declaratory judgment that Plaintiffs were discriminated against in violation of their rights under the Age Discrimination in Employment Act of 1967, 29 U.S.C. Section 630(f);

(b) A temporary restraining order and preliminary and permanent injunction mandatorily enjoining Defendants to recalculate and insure payment to Plaintiffs of the differential of all back pay commensurate with each Plaintiff's seniority, experience and performance, including fringe benefits such as, *inter alia*, health insurance and retirement contributions, and enjoining the Defendants to implement such pay raises prospectively;

(c) A judgment from and of Defendants in the amount of Plaintiffs' back pay (including all fringe benefits) and front pay (including fringe benefits).

(d) Pursuant to the willful violation of the Age Discrimination in Employment Act of 1967, 29 U.S.C. Section 621, *et seq.*, and 29 U.S.C. Section 216, a judgment from and of Defendants for liquidated damages in the amount of twice the Plaintiffs' back pay (including all fringe benefits) and front pay (including all fringe benefits);

(e) Pre-judgment and post judgment interest on judgments obtained, costs of this cause and a reasonable attorney's fee; and

(f) Any other such relief provided by a Court of equity to which Plaintiff may be entitled under the Age Discrimination in Employment Act of 1967.

Respectfully submitted,

_____

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ANSWER AND AFFIRMATIVE DEFENSES

Comes now, the Defendants City of Jackson Mississippi and the City of Jackson Police Department, by and through counsel, and files this their Answer and Affirmative Defenses to the Complaint filed herein and would show unto the Court the following, to wit:

FIRST DEFENSE

The Complaint fails to state a claim upon which relief can be granted.

SECOND DEFENSE

The Complaint is barred by the applicable statute of limitations.

THIRD DEFENSE

The Defendant incorporates and alleges each and every defense available pursuant to Rule 12(b) of the Federal Rules of Civil Procedure.

FOURTH DEFENSE

The process issued is insufficient.

FIFTH DEFENSE

The service of process is insufficient.

SIXTH DEFENSE

The court lacks jurisdiction over the subject matter.

SEVENTH DEFENSE

The court lacks jurisdiction over the person of the Defendants.

EIGHTH DEFENSE

At all times and as to all matters material to the Complaint, the Defendants acted reasonably and in accordance with law and did not breach any duty owed to the Plaintiff.

NINTH DEFENSE

The Defendants and its employees, agents, and servants, at all times relevant hereto, used the degree of

care required of them under law and are not liable in damages to the Plaintiff.

TENTH DEFENSE

Any injury, damage, or deprivation alleged or suffered by the Plaintiffs was the result of the Plaintiffs' failure to act reasonably to avoid or mitigate such injury, damage or deprivation.

ELEVENTH DEFENSE

If any injury, damage, or deprivation was suffered by the Plaintiffs, then the Plaintiffs contributed to such injury, damage, or deprivation and failed to act reasonably to avoid or mitigate said injury, damage, or deprivation because the Plaintiffs would have had the last clear chance to avoid the accident as alleged herein.

TWELFTH DEFENSE

The actions or inactions on the part of the Plaintiffs or of third parties was the sole, proximate and only cause of the incident complained of and the alleged damages sustained by the Plaintiffs, if any. That in the alternative, the actions or inactions on the part of the plaintiffs or third parties amounted to an intervening cause and as such, constitute the sole, proximate and only cause of the incident complained of and the damages sustained by the Plaintiffs, if any.

THIRTEENTH DEFENSE

If the actions or inactions on the part of the Plaintiffs or third parties was not the sole, proximate and only cause of the incident complained of and the alleged damages sustained by the Plaintiffs, then actions or inactions on the part of the Plaintiffs or third parties caused and contributed to the incident complained of and the alleged damages sustained by the Plaintiffs. Thereby, any damages which the Plaintiffs would otherwise be entitled must be reduced in degree and to the proportion that the actions or inactions of the Plaintiffs or third parties caused or contributed to the incident.

FOURTEENTH DEFENSE

The Defendant asserts any and all defenses available to it under Miss. Code Ann. § 85-5-7.

FIFTEENTH DEFENSE

Plaintiff is not entitled to any injunctive relief because he has an adequate remedy at law.

SIXTEENTH DEFENSE

The actions and conduct complained of do not violate any constitutional, federal or statutory right of which these Defendants should have reasonably been aware.

SEVENTEENTH DEFENSE

The Plaintiffs' claims are barred because he failed to exhaust his administrative remedies available under Title VII and 180 days have now passed since the alleged act of discrimination upon which his claim is based occurred.

EIGHTEENTH DEFENSE

The Plaintiffs are not entitled to recover any compensatory damages because his Complaint fails to allege disparate treatment.

NINETEENTH DEFENSE

The Plaintiffs are not entitled to recover any compensatory damages because they failed to file individual charges of discrimination which deprived the City of its opportunity to conciliate the claim before the Equal Employment Opportunity Commission.

TWENTIETH DEFENSE

Without waiving any of the above defenses, the responding Defendant would answer the allegations contained in the Complaint, paragraph by paragraph, as follows:

1.

The allegations of the Paragraph titled "Introduction" are denied.

2.

The allegations of Paragraph One are denied.

3.

The allegations of Paragraph Two are denied.

4.

The allegations of Paragraph Three are denied.

5.

The allegations of Paragraph Four are denied.

6.

The allegations of Paragraph Five are denied.

7.

The allegations of Paragraph Six are denied.

8.

The allegations of Paragraph Seven are denied.

9.

The allegations of Paragraph Eight are denied.

10.

The allegations of Paragraph Nine are denied.

11.

The allegations of Paragraph Ten are denied.

12.

The allegations of Paragraph Eleven are denied.

13.

The allegations of Paragraph Twelve are denied.

14.

The allegations of Paragraph Thirteen are denied.

15.

The allegations of Paragraph Fourteen are denied.

16.

The allegations of Paragraph Fifteen are denied.

17.

The allegations of Paragraph Sixteen are denied.

18.

The allegations of Paragraph Seventeen are denied.

19.

The allegations of Paragraph Eighteen are denied.

20.

The allegations of Paragraph Nineteen are denied.

21.

The allegations of Paragraph Twenty are denied.

22.

The allegations of Paragraph Twenty-one are denied.

23.

The allegations of Paragraph Twenty-two are denied.

24.

The allegations of Paragraph Twenty-three, and all of its subparts a-f, are denied.

WHEREFORE PREMISES CONSIDERED, the Defendants request that the Complaint filed herein be dismissed with prejudice and that the Defendants be awarded all costs associated with defending this action.

Respectfully submitted this the 19th day of June, 2001.

THE CITY OF JACKSON, MISSISSIPPI

BY: TERRY WALLACE
CITY ATTORNEY

BY: /s/ J. Anthony Williams
J. Anthony Williams, MSB # 8787
Deputy City Attorney

City of Jackson

Department of Personnel Management

POLICY AND PROCEDURE

Performance Pay Plan

1. PURPOSE

To provide a compensation plan that will attract and retain qualified people, provide incentive for performance, maintain competitiveness with other public sector agencies and ensure equitable compensation to all employees regardless of age, sex, race and/or disability.

2. RESPONSIBILITY

2.1 The Mayor, or designee, is responsible for the overall administration of the city's compensation program with primary administrative responsibility within the Department of Personnel Management.

2.2 The Director of Personnel Management is responsible for overall maintenance of the plan. The Department of Personnel Management will conduct periodic salary surveys to ensure that salaries remain competitive with external markets and job analyses to ensure equitable internal alignment, and will recommend adjustments and/or revisions as are appropriate subject to approval by the Mayor and Council.

3. PAY PLAN DESCRIPTION

A schedule of rates, pay ranges, and salary steps for each classification shall be established upon recommendation of the Mayor and approval by the Council. The base pay rates for individual positions are valued based upon external market and internal alignment considerations.

3.1 Steps. A total of five whole steps and four half steps comprise the pay plan. Steps 1,2,3,4, and 5 respectively denote the various whole steps in the pay range. Steps

1.5,2.5,3.5, and 4.5 respectively denote the various half steps in the pay range. A two and one-half (2.5) percent incremental increase exists between half steps and a five (5.0) percent incremental increase exists between whole steps.

3.2 Salary. For purposes of this pay plan, salary is defined as the base rate of pay for an employee and may be expressed as a semi-monthly rate for monthly employees who receive semi-monthly pay checks, a session rate for employees who are compensated per session worked, a daily rate for employees who are compensated per days worked, or an hourly rate for weekly paid employees. Additional or temporary pay for special assignments is not included in the base rate of pay as used in this definition of salary.

3.3 Semi-monthly Salaries. All compensation rates are established on the basis of a full-time position unless otherwise designated, and shall be deemed to include pay in every form.

3.4 Weekly Paid Salaries. Compensation for weekly paid employees is based on an hourly rate and shall be deemed to include pay in every form. Conversion of an annual salary to an hourly rate equivalent shall be made by dividing the annual salary by 2080, which is considered to be the average number of work hours per annum.

3.5 Salaries of Part-time and Other Employees. The Director of the Department of Personnel Management is responsible for salary plan administration for temporary and other employees and such rates are established by the payment schedule entitled "Alphabetical Listing for Part-time and Other Employees". Rates have been established pursuant to applicable federal and state requirements.

3.6 Step 1. Step 1 shall normally be paid upon initial employment, promotion, or reclassification into a five- (5) step pay range. An employee may be hired or promoted at a step other than Step 1 but not higher than Step 1.5 based upon the recommendation of the Department Director. Such

recommendation must be supported by documentation of detailed justification considering factors such as experience, education, certification, specialization, market conditions.

3.7 Step Advancement. Advancements through the steps will be based upon job performance. An eligible employee shall be considered for step advancement on the employee's review date. The effective date for performance increases for which employees become eligible in fiscal years beginning October 1, 1999 shall be the first day of the first pay period following each employee's review date.

3.8 Step Advancement Not Automatic. Advancement through the steps is not automatic but shall be conditioned upon successful job performance in the position occupied by an employee.

3.9 Awards. Awards under the pay for performance plan shall be established at 0% for an "unsatisfactory" or "unacceptable rating", up to 2.5% increase for an "achieves requirements" rating and up to 5.0% increase for an "exceeds requirements " or "outstanding" rating. A 2% increase is established for employees whose salaries are at Step 5 or beyond of the pay range for a rating of "achieves requirements," "exceeds requirements," or "outstanding."

3.10 A performance rating of "unacceptable" will result in a follow-up review six months later. The review date will not change as the result of a follow-up review. If such review results in a subsequent rating of "achieves requirement", the employee is eligible for up to a 2.5% increase.

3.11 Procedure for Salary Step Advancement after 9/30/99. Sixty (60) days prior to each employee's review date, the department Director shall be advised by the Personnel Director, in writing, that the employee will be eligible for consideration for a salary step advancement. The Department Director shall in turn advise the Personnel Director, in writing, prior to the employee's review date whether or not the employee is being recommended for advancement to the

next higher whole step or next higher half step of the pay range. The Department Director shall also initiate a personnel action form (PER-3), along with the original of the completed Employee Performance Appraisal form, recommending the step advancement following review. The Personnel Director shall process all recommended personnel action forms (PER-3) for all anniversary step/half step advancements. Salary adjustments will be effective the first day of the first pay period following each employee's review date.

3.12 Review Date. For civilians, the anniversary date of hire or adjusted hire date or the anniversary date of promotion or demotion which is effective 10/01/98 or later. Review dates will be adjusted due to extenuating circumstances, such as reinstatement of employment, lengthy absences or transfer to the Civil Service Competitive Class. This section is not intended to be in conflict with any other section of this policy, which references the definition of review date.

For uniformed fire and sworn police, October 1, 1998 through February 28, 1999, the review date was based on the anniversary date of entry into service or the anniversary date of a promotion or demotion which was effective 10/01/98 or later. The pay plan was revised for uniformed fire and sworn police March 1, 1999. See Working Procedure - Police/Fire Pay Plan Revision dated March 1, 1999.

3.13 Lateral transfers, reassignments, reclassifications or special assignments will not change the review date.

3.14 Hire Date. For most employees, the hire date is the date of employment. Exceptions occur upon reemployment or upon a change from non-benefit status to benefit status. When an employee leaves city employment and is rehired more than one year after the date of separation, the hire date is the date of most recent employment. When an employee changes from employment in a non-benefit status to employment with full benefits, the hire date is changed to reflect the date of employment with full benefit status,

including Public Employees Retirement System (PERS) eligibility.

3.15 Adjusted Hire Date. When an employee leaves city employment and is rehired within one year of the date of separation, the employee is reinstated and the hire date is adjusted for the amount of time the employee was gone. Example:

Hire Date:	01/01/95
Separation:	05/14/96
Return:	10/01/96
Adjusted Hire Date:	05/21/95*

*Employee was gone 140 days. 140 days are added to the hire date to determine the adjusted hire date.

3.16 Tenure. Length of service will be used in the first year of the pay plan to determine placement in the plan. Thereafter, job performance will determine advancement through the steps.

3.17 Eligibility - All employees in Ranges 1 through 38 and 85 through 102 are eligible to participate in the performance pay plan, except those restricted by federal and state guidelines.

3.18 Absence from City Service. For purposes of this policy and procedure, any employee that is absent from city service on any approved leaves for more sixty (60) work days will have his/her review date adjusted by the number of days absent.

3.19 Absence at Time of Review. A properly executed Employee Performance form is required for salary step advancement after 09/30/99. If an employee's absence precludes timely execution of such form, any performance pay increase will be delayed until such form is properly executed, and any resulting increase will be effective the first

day of the first pay period following the completion of the delayed performance appraisal form.

4. PAY PLAN PHILOSOPHY AND IMPLEMENTATION

The city's practice is to compensate employees in accordance with the city's financial condition. In determining the city's financial condition, the city will consider competing service priorities, reserves, availability of funds, revenue growth and the Council adopted budget policies.

4.1 Initial Placement First Year FY'98/99. Placement into the pay plan shall be established by tenure as of 9/30/98. Employees with less than 5 years of city service will be placed at Step 1 of the pay plan if Step 1 would provide at least a 2% increase in salary. Employees with city service of 5 years or more will be placed at Step 1.5 if Step 1.5 would provide at least a 2% increase in salary. Exceptions: Employees who do not place at Step 1 or Step 1.5 based upon their current salary will be placed a the closest step which provides at least a 2% increase within the salary range. Employees whose salaries currently exceed the Step 5 rate will be granted a 2% increase in salary. All other employees will receive a 2% increase in salary, unless specifically excepted by this plan.

4.2 Exceptions to pay increases during initial placement in the first year FY 1998-1999.

The pay rates of individuals in the following classifications shall not be increased by this pay plan:

City Council President
Tourism Communications Coordinator
City Council Member
Tourism Manager
Election Commissioner
Tourism Marketing Assistant
Intern (PT)
Tourism Marketing Manager

Mayor of Jackson
Tourism Projects Coordinator
Tourism Account Executive
Tourism Receptionist/Clerk
Tourism Administrative Assistant
Tourism Sales Assistant
Tourism Administrative Manager
Tourism Sales Manager
Tourism Assistant Manager
Tourism Services Coordinator
Tourism Services Manager

In addition, individual rates set at the federal minimum wage and funded by federal grants shall not be increased by this pay plan.

4.3 Advancement Beyond Initial Placement. Consideration for subsequent step advancement shall coincide with a performance appraisal process which will occurr approximately one year from the employee's review date.

4.4 New Hires. Employees hired or reemployed shall be compensated at Step 1 but not higher than Step 1.5 based upon the recommendation of the Department Director. Such recommendation must be supported by documentation of detailed justification such as experience, education, certification, specialization, market conditions.

4.5 New Hire Adjustments. Employees hired into the city service between October 1, 1998 and September 30, 1999 whose starting salaries are below Step 1 will have an adjustment to salary made on October 1, 1999 which will place them into Step 1 or the appropriate step of the pay plan implemented October 1, 1998.

4.6 Promotions. Employees with tenure less than 5 years as of 09/30/98 who are promoted between the period of October 1, 1998 and September 30, 1999 with promoted salaries below Step 1 will have an adjustment to salary effective October 1, 1999 which will place them on Step 1.

Employees with tenure equal to or more than 5 years on 09/30/98 who are promoted between October 1, 1998, and September 30, 1999, with promoted salaries below Step 1.5, will have adjustments to salary effective October 1, 1999, which will place them on Step 1.5. Review dates for promotional employees will be adjusted to the effective date of promotion

4.7 Reinstatement. In the case of an employee who is reemployed within a one year period, such employee shall be reinstated at the same range and same step. Consideration for subsequent movement will occur on the review date or adjusted hire date.

4.8 Reemployment. If an employee is reemployed with the city, the employee's review date is the adjusted hire date.

4.9 Reclassification. Employees whose positions are reclassified to a higher range shall normally be placed in the appropriate range at the next step closest to their current salary which provides at least a 2% increase. No salary adjustments will be made when positions are reclassified to the same or lower range.

4.10 Demotion. In the event of demotion from a non-appointive position, the employee's pay will be reduced to the same step of the new pay range to which he/she is demoted. (Example: Step 2 to Step 2, Step 2.5 to Step 2.5). In the event of demotion from an appointive position to a classification previously held by the employee, the employee's pay will be set at the step in the demoted range which the employee would have attained, assuming the same performance ratings since the promotion, and the employee will retain the review date previously held in the lower classification.

4.11 Salary Adjustments Due to Promotion. In the case of an employee who is promoted, said employee may be advanced to the next higher step in the promoted pay range that provides a minimum 5% increase. An employee promoting to Step 1 may be considered for advancement up to

Step 1.5 upon recommendation of the Department Director and the Director Department of Personnel Management and approval of the Mayor or designee providing no inequity is created, considering factors such as experience, education and certifications. Further step advancement is contingent upon successful job performance and on an employee's newly established review date.

5.0 FY1998-1999 SALARY GUIDELINES

Salaries upon hire, promotion, demotion, reclassification or other personnel actions between the period of October 1, 1998 and September 30, 1999 will be determined according to previous provisions of this pay plan, unless the resulting salary would create an inequity considering factors such as experience, education and applicable certifications. When an inequity is created, the following guidelines are to be followed:

5.1 Starting Salaries of New Hires and Promotions. The rate of pay for newly hired or promoted employees should be at the period amount (refers to the old minimum rate established under the previous pay plan) of the range. The starting rate may be above the period amount but not above Step 1 provided the following conditions are met: (1) currently budgeted funds must be identified to offset the initial salary; and (2) the new salary must be equitable with the salaries of incumbents, considering relative skills and abilities, training, experience, and applicable certifications.

5.2 Demotion. In the event of a demotion, pay will be aligned at the level that would have been attained if the employee had never occupied the higher classification.

5.3 Reclassification. Employees whose positions are reclassified to a higher range shall normally be placed in the appropriate range at the next step closest to their current salary which provides at least a 2% increase. During the 1998-99 fiscal year, when such an employee has already received the pay plan implementation increase, the new rate

will be the rate the employee would have attained if the reclassification had occurred prior to the pay plan implementation increase. Employees whose positions are reclassified to the same or lower range shall not receive a salary adjustment unless equity requires a salary increase.

6. JOB ANNOUNCEMENTS

All job announcements will be posted with a beginning salary rate reflecting the period amount as a beginning salary. Job postings after October 1, 1999 will post Step 1 of the pay plan as a starting rate.

7. EFFECTIVE DATES:

7.1 This procedure is effective upon Mayor approval.

7.2 Pay For Performance will begin on October 1, 1999.

7.3 Pay Increases. All salary increases under the performance pay plan shall be effective the the first day of the first pay period following each employee's review date.

8. AMENDMENT AND TERMINATION OF THE PLAN

While it is intended that the performance pay plan will become an integral part of the city's compensation policy, the city reserves the right to terminate, suspend or amend the plan, in whole or in part, from time to time, as conditions warrant. Any plan termination or suspension will occur at the end of a fiscal year.

9. UPDATES/REVISIONS TO THE PLAN

Revisions to this plan will be made consistent with the provisions contained in Section 2.2 of this policy.

10. AUTHORITY:

Approved:

[signed]

Mayor Harvey Johnson, Jr. 4/29/99

[signed]

Dr. Otha Burton, City Administrative Officer

4/29/99

[signed]

Dr. George Terry, Director of Personnel Management

4/28/99

[signed]

Mr. Terry Wallace, City Attorney 4/29/99

POLICE/FIRE PAY PLAN REVISION

MARCH 1, 1999

Working Procedure

A. REVISED STEPS

The pay plan implemented 10/01/98 is being revised for uniformed fire and sworn police classifications March 1, 1999. The strategy for implementing the following revisions is to place each employee's salary and review date at the point which would have been reached if the revisions had been implemented on 10/01/98. The revised steps are attached.

B. PLACEMENT ON REVISED STEPS

1. Placement in the revised pay plan is based on each employee's pay, rank and time in service[1] as of 09/30/98, with salary set as follows:

a. On Step 1 if the employee has less than 5 years service on 09/30/98 and if the resulting salary is at least 2% more than the employee's salary as of 09/30/98; or,

b. On Step 1.5 if the employee has 5 or more years of service on 09/30/98 and if the resulting salary is at least 2% more than the employee's salary as of 09/30/98; or,

c. On the nearest step or half-step for which the resulting salary is at least 2% more than the employee's salary as of 09/30/98; or,

d. At a level which will result in a salary 2% more than the employee's salary as of 09/30/98.

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[1] Time in service is the number of years between the service date and September 30, 1998. Service date is the date of entry into the academy adjusted, as applicable, for gaps in service. When a lapse in service is one year or more, the service date will be the date of reemployment.

2. When the employee's status (e.g., rank or assignment[2]) as of 3/1/99 is different from that of 09/30/98, further adjustments are made to determine the employee's pay within the revised plan.

3. Attorney general opinion letters state that retroactive pay does not comply with the state constitution. Accordingly, no retroactive pay will be authorized under this revision.

4. In a few cases employees received pay plan implementation increases prior to March 1, 1999, which placed them slightly above their appropriate step in the revised plan. This occurred due to rounding. When this occurs, no pay is retracted. The difference will be made up in the 1999-2000 fiscal year at which time the employee will be eligible for a performance increase to the next half step for "achieves requirements" or the next two half steps for "exceeds requirements" or "outstanding."

C. REVIEW DATES

1. Revised review date of a sworn police or uniformed fire incumbent is the earliest of

(a) The incumbent's own service date; or,

(b) The service date of any other incumbent in the same rank who has less time in service but whose service anniversary occurs earlier in the fiscal year.

2. The anniversary of a promotion or demotion which occurs after October 1, 1998, will become the employee's new review date.

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[2] Certain assignments result in salary adjustments. In Police, a salary adjustment occurs upon assignment as Commander. In Fire, a salary adjustment occurs upon reassignment into or out of emergency services non-exempt positions.

C. EFFECTIVE DATES[3] OF INCREASES

Placement in the 3/1/99 revised steps will result in higher salaries for most, but not all, police and fire incumbents, when compared to placement in the 10/01/98 steps. When an incumbent is eligible for a higher salary due to placement on the revised steps, the effective date of the increase will be determined as follows:

1. When the initial review date of a sworn police or uniformed fire incumbent is October 1 through February 29, the effective date will be March 1, 1999.

2. When the initial review date is after February 29, the effective date will be the first day of the first pay period following the initial review date. However, Master Police Officers with a revised review date of September 1 are addressed below in C5.

3. When a new review date was set due to a promotion between October 1, 1998 and March 1, 1999 the effective date will be March 1, 1999.

4. Performance increases will be effective the first day of the first pay period following the review date, following normal city procedure.

5. A class of Master police Officers has a revised review date of September 1, and under C2 above would not be placed in the revised plan effective March 1, 1999. However, this

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[3] Effective date is the date when a pay increase is applied to regular, non-overtime hours. Review dates on the first through the fifteenth of the month will be effective on the sixteenth. Review dates on the sixteenth through the last day of the month will be effective on the first of the following month. Increases effective on the sixteenth of the month will be received in the pay check distributed on the last day of the month. Increases effective on the first of the month will be received in the pay check distributed on the fifteenth of the month.

class will be placed into the revised plan on March 1 in recognition of two unique circumstances: 1) the rank of Master Police Officer is attained by tenure alone, and 2) the Master Police Officers with a review date of September 1 have more tenure than all lower ranking police officers. The group of Master Police Officers with a revised review date of September 1 will be placed in the revised plan effective March 1, 1999; their performance expectations will be set September 1, 1999; and, they will be eligible for a performance increase following their first performance evaluation on September 1, 2000.

D. ADJUSTMENTS FOR STATUS CHANGES

1. Promoted/demoted since 10/1/98.

An employee promoted since 10/1/98 will be placed in the revised plan at the nearest step that will result in at least 5% more than the salary the employee would have attained in the revised plan prior to promotion. Next review date of an employees promoted or demoted since 10/1/98 is the anniversary of the date of promotion/demotion. Future promotions/demotions will be made effective on the first or 16th of a month, in order to avoid conflicting effective dates.

2. Acting on 9/30/98.

Placement in the revised plan for employees acting out of rank[4] on 9/30/98 is based on salary in their attained rank.

3. Acting on 2/28/99.

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[4] Acting out of rank refers to non-permanent assignments to a rank above attained rank which are entered into the JIMS employee master file. This does not apply to acting out of rank in Fire Emergency Services Division (ESD). In Fire ESD, acting out of rank is not entered into JIMS employee master file; rather it is entered into JIMS history only and is applied manually through a "Fixed Pay" in Timekeeping.

After placement in the revised plan, acting pay is added to attained rank pay for employees who are acting out of rank on 2/28/99.

4. Day Shift Differential[5] (Fire Only)

For purposes of determining revised plan placement, Day Shift Differential is not included in 9/30/98 Base Pay. After placement in the revised plan, Day Shift Differential is added to attained rank pay for employees who are working day shift as of 2/28/99. Supplemental reports will show 9/30/98 salary less day shift differential. Supplemental reports will show 3/1/98 salary to include day shift differential for employee working day shift as of 2/28/99. Fire ranks which are exempt from the FLSA, i.e., above Fire Captain, do not qualify for the day shift differential, with the exception of District Chief in Arson.

E. EXCLUDED CLASSIFICATIONS

The classifications of Fire Arms Instructor, Warrant Officer, Bailiff and Park Ranger are excluded from these revisions. Those classifications will be administered under all conditions stated in the pay plan implementation of October 1, 1998.

F. POLICE RECRUITS

Under the revised plan, pay and classification of police recruits will be handled differently.

On the day the recruit begins the academy, the classification will be Police Recruit, Pay Range 95. At that time, salary will be placed at Step 1 of Range 95 for recruits without state certification or with less than one year experience as a state certified officer. State-certified recruits with at least one year

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[5] Day Shift Differential is a 2.5% premium added to the base pay of non-exempt uniformed fire personnel assigned to a 40-hour schedule.

experience as a state certified officer will start the academy at Step 1.5 of Range 95.

At graduation, salary for all recruits will advance a half step. Those who started the academy at Step 1 will advance to Step 1.5. Those who started the academy at Step 1.5 will advance to Step 2. Classification and pay range will not change.

Upon completion of field training, performance expectations will be set and a PER-3 will be processed to set the next review date at one year following the date the employee started the academy. There will be no change in classification, pay range or salary.

One year after starting the academy the employee's performance will be reviewed. Satisfactory or better performance will result in a reclassification to Police Officer, and salary will be placed at Pay Grade 96, Step 1.

THE OLDER AMERICAN WORKER AGE DISCRIMINATION IN EMPLOYMENT REPORT OF THE SECRETARY OF LABOR TO THE CONGRESS UNDER SECTION 715 OF THE CIVIL RIGHTS ACT OF 1964

JUNE 1965

LETTER OF TRANSMITTAL

Washington, D.C., *June 30, 1965.*

Hon. John W. McCormack,
Speaker of the House of Representatives.

Hon. Hubert H. Humphrey,
The President of the Senate.

Sirs:

I have the honor to transmit to the Congress herewith the study of the factors which might tend to result in discrimination in employment because of age and of the consequences of such discrimination," with my recommendations on this subject, as required to be submitted by June 30, 1965, under Section 715 of the Civil Rights Act of 1964 (Public Law 88-352).

This report is based upon special studies conducted in response to this directive of the Congress and upon extensive research done earlier, including the work of the President's Council on Aging. The special studies conducted for this report are contained in a separate volume of research materials.

The report presents recommendations for dealing with arbitrary discrimination in employment because of age and with the basic factors which impede the reemployment of displaced workers as they grow older. It also discusses measures which should be considered for

the fuller use of the talents and time of older persons in private enterprise and in community service.

It is my sincere hope that the report will provide the impetus for effective measures in this most deserving and much neglected cause.

Sincerely,

/s/ W. Willard Wirtz

W. Willard Wirtz,
Secretary of Labor

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I. Introduction

The poet Browning could write of growing old, and say of it: "The best is yet to be / The last of life, for which the first was made."

A century later, reality has still not caught up with that poetry. Although scientists and doctors have extended life with almost incredible ingenuity, and have eased some of the physical pains of old age, there has been no comparable invention regarding the uses of these long years of vigorous active life that now commence at the point where, until almost this generation, life began rapidly to ebb. Yet, this is in truth a miracle, a new age of man; and it is hardly to be wondered that it has brought with it new problems as yet unsolved, indeed as yet hardly examined.

The Social Security Act of 1935 established an historic precedent; but security is no more than a foundation for satisfaction, and not itself enough. Subsequent legislation – various housing acts, parts of the antipoverty program, provisions to cover some of the costs of illness that comes with age – has recognized the right to grow old in decency. Yet decency, too, is meager reward.

Meeting the problems associated with advancing years remains, accordingly, a pressing piece of unfinished business for those who consider it not heresy, but the fullest reverence, to include the perfectibility of life within the human competence.

There is, in this connection, no harsher verdict in most man's lives than someone else's judgment that they are no longer worth their keep. It is then, when the answer at the hiring gate is "You're too old," that a man turns away, in another poet's phrase, finding "nothing to look backward to with pride, nothing to look forward to with hope." If that verdict is fair on the facts, it can only

be viewed as part of life's bruising mystery. But if that verdict is unfair, or unnecessary, it is part of man's inhumanity to man that can be and must be stopped.

All of this is the context of the Congress' provision, in Section 715 of the Civil Rights Act of 1964, that –

> The Secretary of Labor shall make a full and complete study of the factors which might tend to result in discrimination in employment because of age and of the consequences of such discrimination on the economy and individuals affected. The Secretary of Labor shall make a report to the Congress not later than June 30, 1965, containing the results of such study and shall include in such report such recommendations for legislation to prevent arbitrary discrimination in employment because of age as he determines advisable.

This report is presented in response to this requirement.

The Congressional directive was carefully and precisely worded, avoiding prejudgment of the influence of discrimination on the employment of older workers, recognizing subtly that not all discrimination in this area is "arbitrary," asking a broad consideration of all "factors which might tend to result in discrimination" in employment because of age, and requesting a report on the consequences of these factors both on the economy and on the individuals affected. These guides have shaped this report.

The development of responsible and effective public policy regarding discrimination based on age requires as steadfast and unfearing confrontation of reality as did the development of a national policy opposed to discrimination based on race, color, religion,

sex, or national origin. But there is an essential difference.

The Nation has faced the fact – rejecting inherited prejudice or contrary conviction – that people's ability and usefulness is unrelated to the facts of their race, or color, or religion, or sex, or the geography of their birth. Having accepted this truth, the easy thing to do would be simply to extend the conclusions derived from it to the problem of discrimination in employment based on aging, and be done with the matter. This would be easy – and wrong.

The gist of the matter is that "discrimination" means something very different, so far as employment practices involving age are concerned, from what it means in connection with discrimination involving – for example – race. It means in connection with the age question, furthermore, several different things.

Employment discrimination because of race is identified, in the general understanding of it, with non-employment resulting from feelings about people entirely unrelated to their ability to do the job. There is significant discrimination of this kind so far as older workers are concerned.

The most closely related kind of discrimination in the non-employment of older workers involves their rejection because of assumptions about the effect of age on their ability to do a job *when there is in fact no basis for these assumptions*. It is this which Congress refers to, in Section 715 of the Civil Rights Act, as "arbitrary discrimination."

A third type of discrimination – which should perhaps be called something else entirely – involves decisions not to employ a person for a particular job because of his age *when there is in fact a relationship between his age and his ability to perform the job*. The only reason for marking out this third area is that it

clearly does exist so far as the age question is concerned, but does not exist so far as, for example, racial or religious discrimination are concerned.

There is finally, so far as age is concerned, that kind of "discrimination" which results when an employer turns an older man or woman away, not because of concern about the individual's ability to perform the work, but because of programs and practices actually designed to *protect* the employment of older workers while they remain in the work force, and to provide support when they leave it or are ill. Seniority and promotion-from-within systems, and pension and insurance programs, are a mark of civilization. They vastly enhance the dignity, the security, the quality of the later years of life in the United States. At the same time, ironically, they sometimes have tended to push still further down the age at which employers begin asking whether or not a prospective employee is too old to be taken on.

With these distinctions between various kinds of "discrimination" in mind, it is important, next, to recognize that there are *two* sets of value judgments to be made regarding any particular kind of discrimination based on age.

The most obvious of these judgments must be made in terms of the justification for particular employment practices in relationship to the efficient operation of a particular enterprise and of the economic system as a whole. This includes the value to the system of making maximum use of the Nation's full manpower potential, of each individual's full capacity.

What is less obvious, indeed still unclear, is the extent to which account is properly taken of the value *to the individual* of opportunity which the most "efficient" operation of the system as a whole might not provide. The prevailing assumption is that people are created for

jobs, not jobs for people. The difference between a great and a lesser society – particularly one which prides itself on being individual-oriented rather than system-oriented – includes its readiness to review this traditional assumption. The point is clearest in the case of an older person whose economic value becomes marginal in traditional market place terms, but for whom employment is the difference between life's having meaning and no meaning. This is not just a matter of "human" concern for the individual. There may well be involved a choice for the rest of us between paying, as customers, a few cents an hour of that individual's wages (and getting the value of his productive potential) or, in the alternative, paying, as taxpayers, the full amount of his "welfare" upkeep (and getting nothing in return).

It is proper reminder, as part of a preface to policymaking regarding a question involving age, that while each of us is growing older as an individual we are growing younger (at least for the present) as a whole population.

It is true, on the one hand, that the absolute number of older persons – and therefore the number of persons who may be the victims of age discrimination in employment – is growing rapidly.

* There are today 22 million men and women between the ages of 45 and 55, almost 17 million between the ages of 55 and 65, and 18 million 65 and over.

* These numbers are all significantly greater, both in absolute terms and as a proportion of the entire adult population, than was true ten years ago, or twenty, or fifty.

* By 1975, there will be almost 94 million men and women between 45 and 55, about 20 million between 55 and 65, and about 21 million 65 and over.

Because young persons go to work later than they used to, and more and more older women are going back to work, the number of workers age 45 and over continues to grow; and older workers will still make up more than a third of the work force in the years ahead.

So the problem area is increasing significantly.

At the same time, however, the median age of the population in the United States is going down.

* Half of us are today under 29.
* By 1975, half of us will be under 26.

What this means is that a Nation which already worships the whole idea of youth must approach any problem involving older people with conscious realization of the special obligation a majority assumes with respect to "minority group" interests. This is, to be sure, one minority group in which we all seek, sometimes desperately, eventual membership. Discrimination against older workers remains, nevertheless, a problem which must be met by a majority who are not themselves adversely affected by it and may even be its temporary beneficiaries.

The "discrimination" older workers have most to fear, however, is not from any employer malice, or unthinking majority, but from the ruthless play of wholly impersonal forces – most of them part of what is properly, if sometimes too casually, called "progress."

Over a sixth of the railroad engineers in the United States are 65 or older. But airline transport pilots must retire at 60. Astronauts are not hired after 35.

The same advancing science that is extending people's productive lives is contributing to putting lower age limits on employment.

This results partly, at least for the present, from the increase in educational requirements for many jobs, and from the fact that older workers today have less formal education, on the whole, than younger workers.

Among male workers 45 to 54, nearly one-third of those who are white, and almost two-thirds of the nonwhite group, *have not gone beyond the eighth grade*. Among male workers 55 to 64, nearly half of the white group and more than three-quarters of the nonwhite group *have not gone beyond the eighth grade*. This is in sharp contrast to the education of young persons now entering the work force.

Any formal employment standard which requires, for example, a high school diploma will obviously work against the employment of many older workers – unfairly if, despite his limited schooling, an older worker's years of experience have given him the relevant equivalent of a high school education.

In 1964, about 3½ million workers 45 years old or older were involuntarily unemployed at one time or another. As the number of older workers increases, the problem of their job readjustment and unemployment will be compounded. The achievement of fuller employment opportunity in the economy as a whole will provide more jobs for older workers. At the same time, the pace of changing technology, changing jobs, changing educational requirements, and changing personnel practices increases the need for special efforts if older workers' employment prospects are to improve significantly.

The Findings which follow in this report identify the extent to which there is evidence of age "discrimination" of various kind, particularly "arbitrary" discrimination, as a factor in the unemployment of older workers.

The Conclusions and Recommendations suggest measures which can and should be taken to increase the economic and social well-being of the Nation and the satisfactions of life for millions of older American

workers who will otherwise be the victims of discrimination in employment based on age.

II. Findings

These findings cover the two areas specified in section 715 of the Civil Rights Act of 1964:

Factors which might tend to result in discrimination in employment because of age.

The consequences of such discrimination on the economy and individuals affected.

In each case, the findings relate to the entire range of factors which tend to have adverse effects on the employment of older workers. Some of these factors involve what is properly identified as arbitrary discrimination. Others do not. Yet some of these other factors not only have the same effect as arbitrary discrimination, but are equally susceptible to constructive action.

Factors Which Might Tend to Result in Discrimination in Employment Because of Age

Older workers are in general valued and often prized employees. Almost 97 percent of male workers 45 and over were employed in 1964. Persons over 45 make up almost 40 percent of the U.S. labor force, but only 27 percent of total unemployment, and only 17 percent of all the applicants registered at the public employment service offices. Most older workers who are not at retirement age do get reemployed when they lose jobs.

There is, nevertheless, clear evidence of the Nation's waste today of a wealth of human resources that could be contributed by hundreds of thousands of older workers, and of the needless denial to these workers of opportunity for that useful activity which constitutes much of life's meaning.

The central element identifiable in this situation is the fact of sluggish human adjustment and impersonal

economic accommodation to the present rapid pace of scientific and technological progress.

These findings analyze the extent to which older workers are deprived of useful and profitable activity as a result of each of the four types of discrimination described in the Introduction to this report.

As has already been indicated in the Introduction, we find no significant evidence of the first kind of discrimination – that which is based on the kind of dislike or intolerance that sometimes exists in the case of race, color, religion, or national origin, and which is based on considerations entirely unrelated to ability to perform a job.

We do find substantial evidence of arbitrary practice in the second category of discrimination – discrimination based on unsupported general assumptions about the effect of age on ability – in hiring practices that take the form of specific age limits applied to older workers as a group.

We find that in the third category, which involves decisions made about aging and the ability to perform in individual cases, there may or may not be arbitrary discrimination on the basis of age, depending on the individual circumstances.

Individual circumstances may similarly lead to arbitrary discrimination in the fourth category that involving institutional arrangements which operate indirectly to restrict the employment of older workers.

A. Discrimination Arising from Dislike or Intolerance

Discrimination in employment based on race, religion, color, or national origin is accompanied by and often has its origins in prejudices that originate outside the sphere of employment. There are no such prejudices in American life which apply to older persons and which

would carry over so strongly into the sphere of employment.

The process of aging is inescapable, affecting everyone who lives long enough. It is gradual, minimizing and obscuring differences among people. At all times there are people of all ages living in close association rather than in separate and distinct social or economic environments. The element of intolerance, of such overriding importance in the case of attitudes toward other groups, assumes minimal importance in the case of older people and older workers.

It is true that hiring officials are not immune to the brightness, vigor, and attraction of youth, nor always above exploiting these attributes for commercial advantage. But such choices involve preferences *for* one group, rather than antagonism *against* another.

We have found no evidence of prejudice based on dislike or intolerance of the older worker. The issue of discrimination revolves around the nature of the work and its rewards, in relation to the ability or presumed ability of people at various ages, rather than around the people as such. This issue thus differs greatly from the primary one involved in discrimination on the basis of race, color, religion, or national origin, which is basically unrelated to ability to perform work.

This is not to say that there is no intolerant prejudice against older persons as such. Determinations not to employ older workers can become deep-seated and even emotional in character. But were this the sole matter, the degree to which it exists would not warrant public concern.

B. Arbitrary Discrimination: Specific Age Limits

The most obvious kind of age discrimination in employment takes the form of employer policies of not hiring people over a certain age, without consideration of a particular applicant's individual qualifications. These

restrictive practices appear in announced employer policies (e.g., in Help Wanted advertisements; or in job orders filed with employment agencies) or in dealings with applicants when they appear in the hiring office.

It has become generally realized that these broad age-limit practices have developed to a point requiring public attention. Twenty States have passed statutory prohibitions of one form or another against them. But there has been no comprehensive study of their scope or effects, and the available information has been largely limited to two surveys (in 1956 and in 1963) of age restrictions placed by employers on job openings filed with local Employment Service offices.

A special study of age limitations in hiring has accordingly been made in connection with the preparation of this report. This study is based on a survey made by the Bureau of Employment Security of the Department of Labor, through the Federal-State Employment Service system. The study covers a sample of over 500 employers, employing half a million workers, in five cities (Baltimore, Indianapolis, Kansas City, Mo., Memphis, and Salt Lake City). These cities are all in States which did not, as of the time of the study (early 1965) have laws against age discrimination in employment. (Indiana has since adopted such a law.) The study includes both employers who file job openings with the Employment Service and others who do not.

The fall study is contained in the volume of research materials which accompanies this report.

This 1965 study, along with other available data and information, permits the following findings.

1. *The setting of specific age limits beyond which an employer will not consider a worker for a vacant job, regardless of ability, has become a characteristic practice in those States which do not prohibit such*

action, to the extent and with the result that in these States:

-- *Over half of all employers are presently applying such limitations, using age limits typically set at from 45 to 55;*

-- *Approximately half of all job openings which develop in the private economy each year are closed to applicants over 55 years of age, and a quarter of them are closed to applicants over 45.*

Almost three out of every five employers covered by the 1965 survey have in effect age limitations (most frequently between 45 and 55) on new hires which they apply without consideration of an applicant's other qualifications. Twenty-seven percent of the employers reported formal upper age specifications for some or all occupations. It was determined on investigation that an additional 30 percent follow such a policy in practice.

The results of this survey are consistent with those in the 1963 Employment Service survey of the job orders filed by employers with the Service in eight cities (Albuquerque, Baltimore, Houston, Indianapolis, Kansas City (Mo.), Louisville, Memphis, Salt Lake City) in States having no laws prohibiting age discrimination. The 1963 survey revealed that about 30 percent of the job orders filed were limited to men and women under 45, and over 40 percent were limited to applicants under 55. A similar study in 1956 in seven other cities had shown even higher percentages of job orders with age restrictions: 40 percent fixed age 45 as an upper limit, and over 50 percent fixed age 55 as the limit.

2. *The establishing by employers of stated age limitations (or, on the other hand, of stated policies against any age limitations) has a direct and marked effect upon the actual employment of older workers, with the result that:*

-- *The proportion of older workers hired by firms with stated upper age limits is half the proportion of older workers hired by firms with stated policies of ruling out age limits.*

-- *The proportion of older workers hired by firms with no stated policy regarding age limitations is significantly smaller than the proportion of older workers hired by firms with stated policies of ruling out age limits, especially with respect to workers 55 and over.*

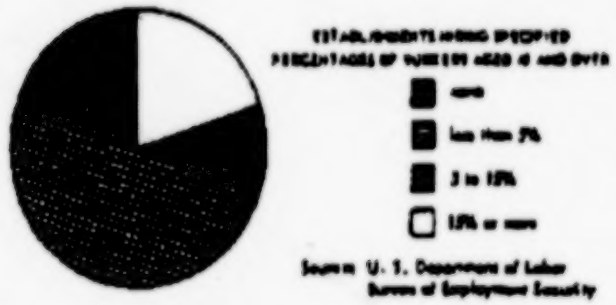
The 1965 survey shows the following:

Older hires as percent of total hire in firms having--

Age of older hires	*Upper age limits*	*No policy on age*	*No age limits*
Total, 45 years and over.	6.9	8.6	13.0
15 to 54 years ...	4.7	6.5	9.5
55 to 64 years ...	1.9	1.8	3.3
65 years and over	.3	.3	.2

A very small proportion of new employees hired today are 45 or older. One-fifth of the employers surveyed hired no older workers at all. (See chart 1.) These facts in themselves indicate, of course, nothing about discrimination.

Chart 1. OLDER WORKERS REPRESENT LESS THAN 5 PERCENT OF NEW HIRES IN MOST ESTABLISHMENTS[1]



[1] Based on Special Survey of Hiring Practices in 5 Cities in 1965

The state of labor supply and demand obviously has an important influence on employer hiring policies. Restrictions tend to be eliminated, eased, or waived when the employer cannot recruit under rigid specifications. The 1965 survey, like earlier surveys, shows somewhat fewer restrictions (i) in skilled occupations, the traditional crafts, and the professional and semiprofessional positions, where there are widespread shortages, and (ii) in the expanding but traditionally lower paid retail sales and service occupations. Age limitations are most frequent for clerical positions and for semiskilled and unskilled work, and for "outside" salesmen. Similarly, the manufacturing industries, with the notable exception of apparel, are hiring relatively few people over 45. Retail stores, hotels, personal and medical service industries, and government agencies are generally hiring older workers in substantially larger proportions.

It is reasonable to expect that present age restrictions would be eased to some extent under conditions of fuller employment. This has happened in the past, particularly in periods of national emergency.

There is no current indication, however, of any general or significant relaxation of present age restrictions in hiring on the basis of prospective overall economic developments alone.

The prospect is, rather, that the continuation of age limitations will have a substantial adverse effect upon the employment opportunities of older workers.

3. *An unmeasured but significant proportion of the age limitations presently in effect are arbitrary in the sense that they have been established without any determination of their actual relevance to job requirements, and are defended on grounds apparently different from their actual explanation.*

Conclusive determination of the extent to which age restrictions are arbitrary would necessitate detailed examination of the reasons for the limitations in individual cases, under carefully established procedures including, almost necessarily, some form of hearing process. No such proceedings were envisaged in Section 715 of the Civil Rights Act, and none have been instituted.

It is apparent, however, from evidence obtained during the course of this study, that a great many age limitation policies are based in fact on considerations quite different from those offered as (and undoubtedly believed to be in many cases) their explanation.

The explanations given by employers for the adoption of age limitations include (as reflected in the 1965 study) a variety of factors:

- -- Physical capability.
- -- A policy of promotion-from-within and accompanying restriction of hiring to younger ages and entry jobs.
- -- Ability to hire younger workers for less money, and concern that older workers' earnings expectations are "too high."

-- Pension plans (costs and provisions), and to a much lesser extent, costs of health and life insurance.
-- Lack of skills, experience, or educational requirements.
-- Limited work expectancy.
-- Training costs and low productivity.
-- Lack of adaptability and undesirable personal characteristics.
-- Desired age balance in the work force.

Physical capability is by far the most prominent single reason advanced for imposing upper age limits.

There are unquestionably *some* jobs involving physical demands so unusual that it represents not only good business sense but common decency not to assign them to workers whose age increases the *possibility* of some weakening of body tissue.

It is relevant, however, in determining the true basis for these age limitations which are explained in terms of physical demands of the work

-- That in 70 percent of the cases of claimed basing of age limits on physical capabilities reported in the 1965 survey, no studied basis for this conclusion was reported;
-- That there is a vast difference between various employers' ideas concerning the age at which physical demands should exclude workers from jobs involving similar duties -- so that in the 1965 survey physical requirements were reported to account for restrictions as low as 25 years of age and as high as 60 for groups of occupations involving comparable physical exertions and demands for strength;
-- That a great many responsible employers do hire older workers for jobs other employers bar them

from on the basis that their age alone disproves their capability.

The very generality of many of the age limitations indicates their character. They exclude all potential new employees above a certain age, without any differentiation among the various jobs which may be involved and with no provision for determination of whether particular applicants might be qualified despite their age.

Further illumination comes from the responses which employees using age limitations made to an inquiry included in the 1965 Employment Service survey concerning the circumstances under which these restrictions might be waived. Labor supply conditions outweigh any other considerations. Many employers using age restrictions indicate a willingness to hire "over-age" workers if they cannot get younger workers, but will not consider them on their merits if the jobs can be filed with younger workers. Some state that older workers would only be hired if their abilities *exceeded* those of younger workers.

The various studies show that upper age limits set on a company wide basis are generally lower than those set for specific jobs. The higher the skill level, and the greater the demand for workers, the higher the age limit; age limits for professional, managerial, and skilled workers are typically set at 50 or higher; for service workers also at 50 or above; for clerical workers and salesmen below 50; and for semiskilled and unskilled below 45. A clear reflection of job market judgment is apparent in the setting of these ages.

4. *The competence and work performance of older workers are, by any general measures, at least equal to those of younger workers.*

The Bureau of Business Management at the University of Illinois in a study of supervisory ratings in

manufacturing establishments in 1954 found that 11 percent of the workers 60 years old and over received excellent ratings for overall performance; only 3 percent received poor ratings. On work quality, 32 percent were rated better than young workers, 60 percent the same and 8 percent poorer.

A 1959 Canadian study of sales persons in retailing showed that workers hired above the age of 40 attained higher performance ratings in a shorter period than workers hired below 30 years of age. They reached their peak performance in their fifties.

Department of Labor studies of factory production work involving physical effort indicate that a slight decrease in productivity occurs after age 45; but that the decrease does not become substantial until age 60. In office or other sedentary work little, if any, decline occurs prior to age 60, and the subsequent decline is minor.

So far as the allegedly key issue of physical capability is concerned, a comprehensive review of available medical and psychological evidences reveals no support for the broad age lines which have been drawn on the basis of claimed physical requirements. To the contrary. The basic research in the field of aging has established that there is a wide range of individual physical ability regardless of age.

The most extensive series of recent studies are those reported by A. T. Welford in 1958 on the basis of the Nuffield Foundation's basic work on aging and human skill, covering the post war period. These studies attribute most of the deterioration of ability to changes in the central nervous system, and indicate that these changes do not affect occupational skills in any significant numbers of cases before age 60.

The Nuffield Foundation studies do point to increasing differences of individual performance with

advance in age. They show, however, at the same time, an increasing capacity of the human system to compensate for diminishing abilities, and a wide range of occupational requirements which falls well below the usual range of personal capacities subject to these requirements. The scientific findings, if they were to be translated into hiring policies, would clearly rule out policies based on rigid age limits.

One of the higher hiring rates for older clerical workers found during the course of the 1965 study is in the postal service, where appointments are made, under Civil Service regulations, without regard to age. Although postal clerks are engaged in some of the most physically demanding of the clerical occupations, a study made by the Bureau of Labor Statistics of the relative performance of Federal mail sorters in 1963 showed an equal performance level for the older workers.

Here again, the strongest indication of the lack of real basis for most age limitations is the demonstrated willingness of so many American employers to consider older workers on their merits as individuals and to hire them. Although one out of every five of the employers included in the 1965 Employment Service survey hired no new employees among applicants over 45 years of age, another one-fifth hired at least 15 percent in this age group. Many of these firms reported an active policy of recruiting older persons, and praised them for performance and dependability.

It is significant that employers and supervisors often rate their own older workers high on over-all performance, but are at the same time reluctant to hire new employees in the same age brackets.

5. *Arbitrary age discrimination is significantly reduced in States which have strong laws, actively administered, directed against discrimination based on age.*

There are today twenty States which have adopted statutes prohibiting discrimination in employment on the basis of age. (See chart 2.)

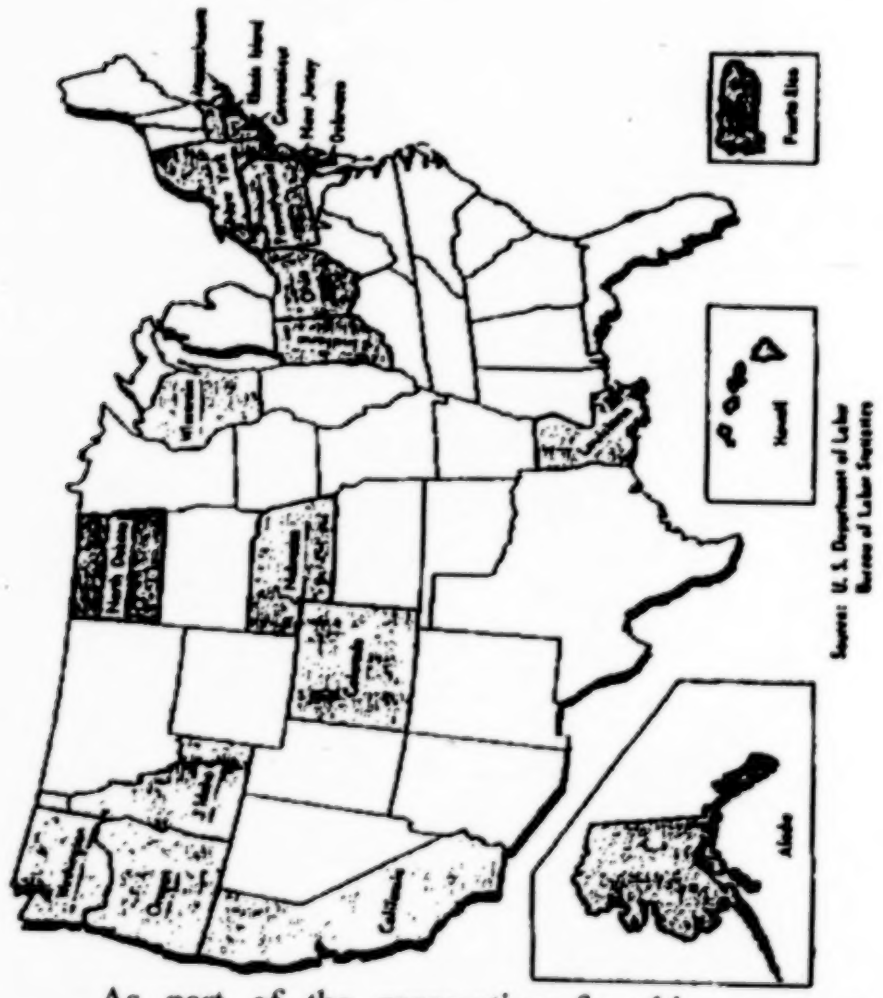
The State laws against discrimination in employment on account of age cover about half of the nonagricultural employment of the U.S. and Puerto Rico:

Colorado (1903)	Alaska (1960)
Louisiana (1934)	Delaware (1960)
Massachusetts (1937 and 1950)	California (1961)
	Ohio (1961)
Rhode Island (1956)	Washington (1961)
Pennsylvania (1956)	New Jersey (1962)
New York (1958)	Nebraska (1963)
Connecticut (1959)	Hawaii (1964)
Wisconsin (1959)	Idaho (1965)
Oregon (1959)	Indiana (1965)
Puerto Rico (1960)	North Dakota (1965)

All but three of these laws have been passed since 1955; three were passed in the 1965 legislative sessions. Typically, they apply to employers, employment agencies and labor organizations, with certain exceptions for domestic service, agriculture and small employers. They ban discriminatory practices on account of age, including refusing to hire, discharging, or discriminating in compensation or other terms or conditions of employment. Over half of the States forbid including age limitations in Help Wanted ads or inquiries by employers and employment agencies. Most of these laws are administered as part of Civil Rights legislation.

CHART 2. STATES WITH LAWS PROHIBITING AGE DISCRIMINATION IN EMPLOYMENT, 1965

[Sideways Page customer copy p. 12]



As part of the preparation for this report, a conference of State administrators of age discrimination laws was convened by the Secretary of Labor, in September 1964, to seek their views on the effectiveness of such legislation. This was followed by detailed inquiry into experience in seven States. Experience under these laws is summarized in a special analysis contained in the separate volume of research materials which accompanies this report.

There is clear evidence that in those States where a firm position has been taken, at least the obvious forms

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of discrimination have diminished, and job opportunities for middle-aged and older workers have increased. The existence of a State law with penalties for violations has made efforts to resolve complaints more effective than has been the case where there have not been such penalties. Age limitations have virtually disappeared from Help Wanted ads in the States which have prohibited them.

However, inadequate funds and staff have limited the effectiveness of these laws in most States. Some have not been implemented at all. In some cases, the broad responsibilities of State agencies to deal with cases of discrimination on account of race, color, or religion, as well as age, have resulted in administrative burdens too large for the staffs that were authorized.

Despite these administrative limitations, the State agencies report numerous cases in which complaints have been adjusted in conferences with employers, with the result that older persons were retained or accepted by employers. More than two-fifths of the complaints from workers who believed that they had been discriminated against because of their age were found to involve a sufficient degree of arbitrary discrimination to warrant administrative action to bring the employer into compliance.

6. *The Federal Government has adopted a broad and effective policy of nondiscrimination on the basis of age so far as its own employment policy is concerned, and has extended this principle to cover Government contractors.*

The Federal Government's own established policy of hiring on merit through civil Service procedures, without regard to age, is of long standing. Its compulsory retirement age is 70, with occasional exceptions.

Executive Order 11141, issued by President Johnson on February 12, 1964, established a Federal

policy against discrimination in employment on account of age by Federal contractors and subcontractors. The Order includes no enforcement provisions and no special administrative machinery for dealing with complaints, providing only that Federal Departments and agencies "take appropriate action to enunciate the policy." Procurement regulations have been amended and the Order has been given wide circulation among larger contractors. Their responses have indicated that the Order stimulated reappraisal of hiring policies respecting age. There have been only a few complaints from individuals and where they have involved violations of the order they have resulted in changes in employer policies.

Executive Order 11141 includes a special provision regarding the elimination of age limitations from employment advertising. A check of Help Wanted ads of Federal contractors appearing in leading newspapers in 25 cities in the spring of 1965 indicates that less than 5 percent had age specifications.

C. The Necessary Recognition of Forces of Circumstance.

Consideration has been given in the preceding section to the arbitrariness of specific age limitations, indiscriminately applied. It is equally important to recognize the force of certain circumstances which unquestionably affect older workers more strongly, as a group, then they do younger workers.

There can be many reasons why a particular older worker does not get a particular job, and some of them can well be associated with that worker's age. There are differences among people, and some individuals, for a variety of reasons, become less employable as they grow older, just as others become more employable as they grow older.

1. *The health factor is different as between older and younger workers.*

A particular worker may develop a serious health problem which limits his availability for a wide variety of jobs. This health problem would, in the case of a younger worker, have similar effect. But if it is the kind of health problem that is more likely to be serious among older workers, then older workers affected by it are more likely to be rejected for certain jobs on this account.

This in no sense means that it would be reasonable to exclude all older workers from consideration for such jobs because *as a group* they are more subject to specific health problems associated with growing older. But it does mean that when older workers get considered on their merits, a certain proportion of them fail to qualify.

The medical and psychological findings concerning the abilities of older workers to do specific tasks have already been cited. With increases in the range of individual differences among workers as age advances, it is inevitable that some will fail to meet requirements.

Studies relating health and age have generally found fewer acute illnesses among older than among younger workers, but show that the older ones are more prone to chronic conditions. Chronic conditions may not prevent the employed from continuing to work, but may well result in a higher rejection rate (for example following physical entrance examinations) among unemployed older workers.

The health of the older worker (as well as of the younger) is considerably poorer among the unemployed than among the employed. In 1961-62, days of restricted activity (due to acute conditions) among unemployed 45-64 year olds were twice those of the employed (8.8 versus 4.0). Ten percent of the employed men aged 45-64 had major activity limitations due to chronic conditions; 26 percent of the unemployed had such limitations. Differences between older and younger workers are similarly more pronounced among the unemployed.

2. *The educational attainment of older workers – or the inadequacy of it – is often a bar to their employment for specific kinds of work, either because of inability to meet specific job requirements or employer preferences, or because younger workers meet them better.*

The fact that most older workers obtain new employment despite rapid technological change indicates the value employers place on their experience, capacities, and stability. But those with inadequate education have far less success in obtaining work than those who are well prepared.

Unemployment rates are inversely related to education in all age groups. Thus, in March 1964, 7 percent of the white male workers 45 years old and over with less than 8 years of schooling were unemployed as compared with 5.4 percent of those who finished elementary school, 2.6 percent of those who finished high school and 1.1 percent of those with 4 or more years of college. The same pattern held true for white women workers.

The pattern for nonwhite workers, though similar, showed less difference because of other factors which result in higher unemployment rates in the nonwhite group regardless of their education: 7.5 percent of the nonwhite men with 8 years of schooling or less were unemployed as compared with 6.3 percent of those who finished high school; percentages for nonwhite women workers in this age group were 6.7 percent and 3.8 percent respectively.

Changes in the nature of jobs and continually rising levels of education have combined to lift employers' educational requirements and preferences. Many older workers now have insufficient education to qualify for the types of jobs which have been growing most rapidly: medical and dental technicians, nurses,

therapists, technical aides in the sciences and engineering, mechanics and repairmen for complex equipment and machinery. Even for many plant production jobs in the major industries, employers for a variety of reasons seek young workers with high school educations or equivalent vocational training.

When older workers are displaced from their accustomed work, they must compete with younger, better educated workers. According to the most recent report on educational attainment of workers, that of the Bureau of Labor Statistics for March 1964, three-fifths of those who are 55 years and over have less than a high school education; more than one in five has less than 8 years of schooling. (See chart 3.)

The schooling of about one in ten white and one in five nonwhite unemployed workers 45 years or over is below the literacy level, represented by five years of schooling, a demarcation point used generally among educators. These older workers usually do not even qualify to enter training programs designed to develop new skills or refurbish outmoded ones, under the Manpower Development and Training Act.

That educational handicap is a barrier to employment is confirmed further by Bureau of Labor Statistics studies in 1962 and 1963 of displaced workers in five different industries: petroleum refining, foundries, and manufacturing of automobile equipment, glass jars, and floor coverings. The older displaced workers who completed high school had substantially less unemployment than those who did not. Displaced workers who were not seeking employment were primarily the less educated group who gave up hope in view of their combined handicap of age and inadequate education. W. H. Franke and the late R. C. Wilcock of the University of Illinois, in their studies in six midwestern cities in 1960-62, reported similar findings.

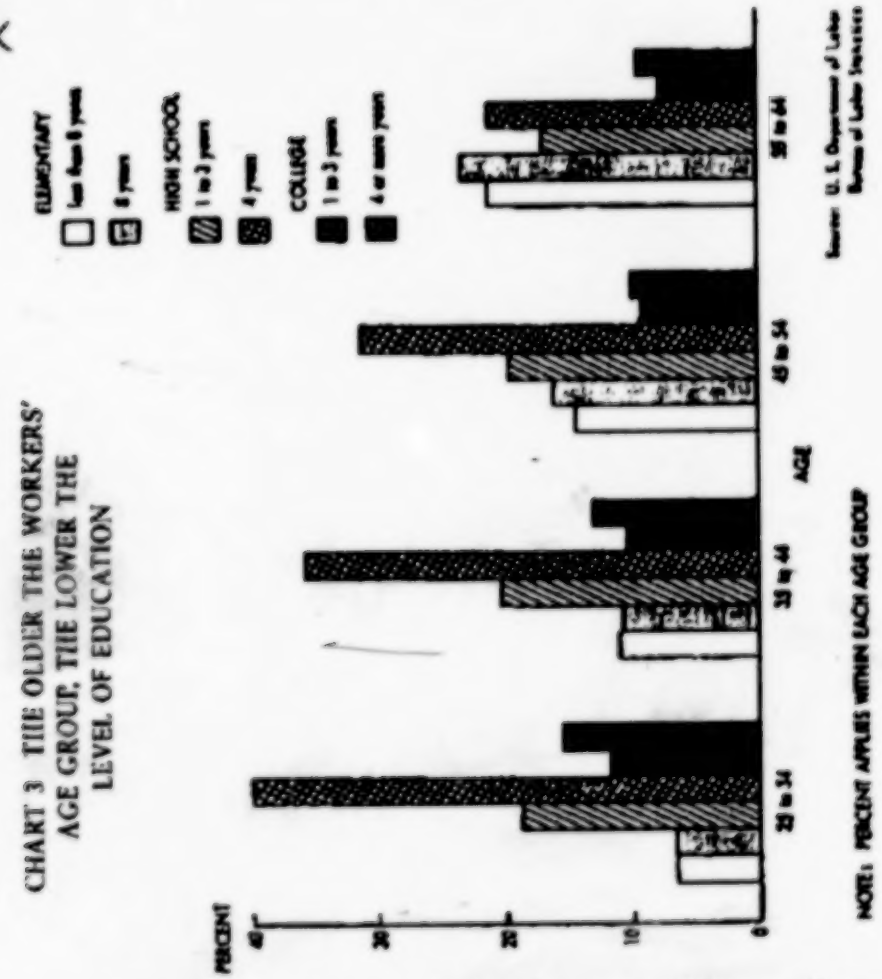
These studies are cited in the research materials which accompany this report.

Many older workers find it strange and difficult to go back to school as they recall it after many years of work and life. The experience of the Employment Service in serving these older people indicates quite clearly that special efforts are needed to help them over the hurdle of going back to some form of schooling – even at an adult level – and special programs under the Manpower Development and Training Act are being designed for this purpose (with the aid of the National Council on Aging). It has also become clear as a result of efforts under the

Manpower Development and Training Act that training must be custom tailored and must be accompanied by special job placement and job development assistance. The Manpower Development and Training Act program (preceded by the training program under the Area Redevelopment Act for depressed areas) is the first national education and training program directed specifically at the training and educational needs of the unemployed throughout the country. While there is now some means of assisting those who are unemployed, there is, as yet, virtually no means of assisting the employed whose education or training is deficient or outmoded – persons as it were, who are not in trouble, but who are heading for it. The Nation's adult education programs do not reach the great bulk of older people either while they are employed or afterward. Neither offerings nor educational methods are oriented toward the particular needs and interest of older workers in the population.

3. *Technological change itself affects the older worker's employability, not so much as a factor bearing on individual capacity, but as a significant influence on the environment in which the worker has aged.*

CHART 3 THE OLDER THE WORKERS' AGE GROUP, THE LOWER THE LEVEL OF EDUCATION



The jobs under new technology are different from those for which the older worker was trained and in which he worked and acquired his experience. Often new jobs are in geographic locations to which younger more mobile workers are attracted; conversely, many older workers are entrenched in areas from which jobs have disappeared.

As new technology displaces older industries and plants and job methods, older workers are especially vulnerable to the changes which follow. Study after study over the last decade has pointed to the same conclusions:

those made by Wilcock and Franke, already cited; those made by the Bureau of Labor Statistics; and the experience of the U.S. Employment Service in projects to help displaced workers in cases of plant shutdowns, including the current project in South Bend, Indiana.

Older workers are often in jobs and plants newly established a generation or two ago. Their skills and experience are not always transferable, and the plants and industries which are new today are often geographically distant from the old. As new fuels have supplanted coal, for example, and as coal mining technology itself has improved, older miners have been stranded far from new centers of opportunity. Many of the older consumer goods manufacturing industries have shifted away from the long established centers of population, in response to new markets and new technology. Older workers displaced as a result of these shifts have often been stranded in the areas of decline. It is the younger workers, less encumbered with family, home, and community associations, who have followed the course of the Nation's industrial advance.

This is true of older workers not only in declining or depressed areas but generally of displaced older workers anywhere when technology changes the character of their jobs or their geographic location. A Bureau of Labor Statistics study of displaced workers from an automotive equipment plant, described in the research materials that accompany this report, illustrates the seriousness of this problem even when transfers to the new locations are offered with full retention of benefits. In this case only one-third of the workers accepted offers of transfer. Many who owned homes had to commute long distances daily to their new work location. Two out of five of those who did not accept transfer were still unemployed 10 months after their layoff.

These changes in technology and in the location of industry have also left older industries with higher than usual concentrations of older workers. In turn, this concentration has given rise to special programs for compulsory or early retirement in "declining" industries – and even in stable or growing industries during periods of economic downturn – designed to open opportunities for younger workers. Moreover, the very availability of Social Security benefits, although yielding only a minimum income (which has to be supplemented from other sources) to workers in retirement, has made it possible to rationalize involuntary retirements induced for reasons of company manpower or personnel policy.

Further, the development of "special early retirement" incentive programs under private pension plans has opened up additional opportunities for even earlier separation of new groups of older workers. While special benefits are generally offered to induce retirement prior to the normal retirement age, the practice tends to push downward the ages at which employers are willing to employ older workers for new jobs or vacancies.

The pace of technological change, and its effect on the growth and decline of industries, has meant not only changes in the jobs that men hold, but more job changes during their working lives. Workers in the closing decades of this century will have held many more jobs during their lifetimes than did their parents and grandparents. New plants staffed with young work forces may give way to new activity before their workers grow old; a young work force might then come to be regarded as a "normal" work force, and the hiring of older workers as "exceptional."

4. *There is no evidence that unusual numbers of individual older workers fail of selection because of valid advance judgments about expected productivity.*

Obviously individuals in all age groups fail to pass a variety of aptitude and other entrance tests. But there is no evidence that older workers' experiences are different from those of the population generally, except in one respect – the better showing of younger, better-educated workers on tests in which performance is affected by recency of education and testing experience.

Judging expected performance is a difficult task. Wide variations in performance exist among individuals of every age group. All of the studies of job performance of older workers have found this to be true in all of the types of work studied.

Studies made by the Bureau of Labor Statistics of job performance of workers in factory production jobs, in office work, and in mail sorting jobs, for example, show that average performance of older workers compares most favorably in office jobs, where productivity equaled that of younger groups and steadiness of output from week to week rose with age, and compares least favorably in production jobs, where average production declined slightly after age 45, somewhat more markedly after age 55, and substantially after age 65. Among the mail sorters, there was no significant production decline until age 65. Studies by the Canadian Department of Labor of retail sales personnel show that peak performance was reached in the fifties (51-55 in one case and 56-60 in the other).

The Bureau of Labor Statistics studies of production workers also show that individual variation from the average in every age group is substantial, indicating that in each of the groups many workers will be found whose performance may be considerably below the average, as well as above average. Over two-fifths of the men 45-54 years of age, and over 30 percent of the men 55-64 years of age in footwear plants had an output per man-hour greater than the average for the age group

35-44. Conversely, of course, 57 percent of those 45-54 and 68 percent of those age 55-64 had an output equal to or lower than the average for the group age 35-44.

These findings show the injustice of judging workers by the average for the group rather than on the basis of their individual abilities. They also show the futility of using past average performance of an overall group to judge superiority and inferiority of a particular applicant for work.

D. Institutional Arrangements that Indirectly Restrict the Employment of Older Workers

A broad range of personnel programs and practices affect the employment of the older worker, although they were not developed for this purpose. Instituted to bring efficiency, equity, order, and improved fringe benefits, they operate with some force against older workers not within their compass.

1. *The efficient operation of modern business requires specialized personnel administration and established personnel rules.*

This often means rather general rules, and the application of general rules – often a "book of rules" – to individual cases. This is as true of hiring policies respecting age as it is of other matters of personnel policy.

The 1965 Employment Service survey found that hiring policies were preponderantly set by central managements, including personnel officials. Yet in only one case in six was a positive nondiscriminatory policy reported with respect to age. The practice of generalizing personnel hiring policy by arbitrary rules which ignore individual differences is itself a factor that deprives companies of talent and qualified workers of opportunity.

2. *Personnel policies are properly designed to establish an orderly system for assignment and promotion of already employed workers.*

Promotion-from-within policies, accepted as desirable by management and worker alike, very often restrict hiring from outside the firm to lower wage entry levels, traditionally regarded as more suitable for younger workers. Staffing to assure the "age balance" of the work force, or continuity of operation by advance designation of successors, also restricts outside recruitment to lowlevel jobs and younger workers.

Starting the older worker at a low-level job involves not only age balance, but questions of pay. For the experienced worker an entry job often means a reduction in earnings level. Resistance to such cuts in earnings has been found to limit reemployment opportunities in several case studies of displaced workers. Some refusals to hire older workers were explained on this basis by employers cooperating in the 1965 Employment Service study; in other cases employers were reluctant to offer jobs at pay levels they regarded as appropriate for younger workers. Employers also expressed the view that younger workers could in general be employed at lesser rates of pay.

The question of earnings also arises in the administration of unemployment insurance; workers, particularly those experiencing long periods of unemployment, are counseled to be realistic about earnings horizons, and failure to adjust to realistic levels is often cause for disqualification under State statutes. Under the program of Federal extended unemployment benefits proposed by the president and contained in H.R. 8282 and S. 1991, greater emphasis is to be placed on such counseling of unemployed workers.

3. *Seniority systems which generally protect older workers in their jobs – because of longer service, not age as such – sometimes operate to impede the employment of other older workers with long industrial*

service but without recall rights in particular seniority units.

Where seniority units for layoff purposes are narrow they may result in layoffs of workers who have longer service than workers in other seniority units who are retained. And while older workers are being laid off in one seniority unit, new workers may – under some collective bargaining agreements – be hired in another.

4. *Employer attitudes toward the hiring of older workers are affected by fear of rising costs under recent court decisions interpreting State workmen's compensation laws.*

As a result of court awards for disabilities stemming from pre-existing conditions such as arthritis, heart malfunction, diabetes, and other degenerative diseases that employers had contended were not job related, some employers are becoming reluctant to employ older workers (as well as handicapped workers). Further information on these developments is contained in the research materials which accompany this report.

Neither the operation of the workmen's compensation laws nor of the unemployment insurance systems can be expected to lessen employer concern over such costs. What is involved is a major gap in coverage for disabilities that are not job related – a gap which itself erects a barrier to the employment of the older worker.

5. *The private pension, health, and insurance plans which have improved the situation of employed workers are probably affecting adversely the hiring of unemployed older workers.*

It is not clear to what extent these restraints arise directly from cost factors and to what extent they are the result of plan operations largely unrelated to costs. A recent Bureau of Labor Statistics analysis of the costs of these plans, and extensive actuarial calculations covering

pension costs, are summarized in the research materials which accompany this report.

Private pension plans now cover more than a third of the nonfarm work force and health and insurance arrangements cover three out of four. There are many types of plans, ranging from pension and health and insurance packages purchased by companies willing to spend specific amounts of money to elaborate self-insured arrangements.

The variety of these plans is paralleled by variations in their costs. Under one important group of pension plans, for example, average annual costs, if calculated separately by age groups, is about $80 a year higher for workers hired in their late forties than for workers hired in their late-twenties. This does not necessarily mean, however, that overall costs increase when firms follow policies of hiring older workers. Where vesting of employee pension credits is provided, the differential costs are smaller. Moreover, where benefit formulas are based largely on highest earnings or earnings during the last few years of service, the ultimate pension costs could be greater for newly hired young employees than for older ones.

Since life insurance plans are group plans, the most important cost factors are the average age and experience of the group. If turnover keeps average age relatively constant, employers are free to hire older workers without added cost.

When insurance costs are calculated by age groups, they are as a whole related to age. The BLS study estimates that for large employers, net insurance premiums after dividends for a $5,000 life insurance policy are almost $3 per month higher for workers 45 to 54 years old than for those under 45, and $8 per month more for workers 55 to 64.

Age is a far less important factor in health care; differential costs basically depend upon marital status and family coverage rather than age. Costs for married workers and their families are about the same for all ages up to nearly 65. For large plans, the net cost for single men – who are less than a third of all nonfarm male employees – although much lower than for married men with families, show differentials of about $3 per month for men 45 to 54, and $5 per month for men 55 to 64, over costs for workers under 45. Accident and sickness plans show similar cost differentials.

The overall cost of a health and insurance program will be affected by experience rating (although this does not apply in a large number of cases), by funding methods, and by hiring policies which affect experience. The cost of a typical health and insurance package for a company with a hiring policy that concentrates on young workers may prove to be less than that for a company with balanced hiring in all age brackets.

Cost considerations do not, however, always operate against the older worker. Where benefit formulas yield smaller pensions for newly hired older workers the costs are not greatly affected; where central funds are established, as in multiemployer plans, an individual employer's contribution is not ordinarily affected. Similarly, the purchase of group insurance is often handled without regard to changes in the age distribution of the work force, and medical insurance is often purchased from community organizations at communitywide rates. In some cases, special plans have been developed which are neutral with respect to the relationship of cost to age. Older workers are widely hired by employers with pension and insurance plans as well as by those without such plans.

Relatively few employers, in fact, cited the costs of providing pension and insurance benefits as significant

barriers to employment of older persons when interviewed during the course of the 1965 Employment Service study of employer hiring practices and policies. Even in cases where they mentioned pension and insurance, cost was not the principal factor involved. Rather, what was cited was the company policy of excluding new employees beyond a certain age from coverage under pension plans – exclusions generally developed because of the time required to build up minimum credits – and in the case of insurance presumed inability to pass physical examinations.

The age exclusions under pension plans vary widely from under age 50 to over age 65; more than a third of them are set at or below age 55. (See chart 4.)

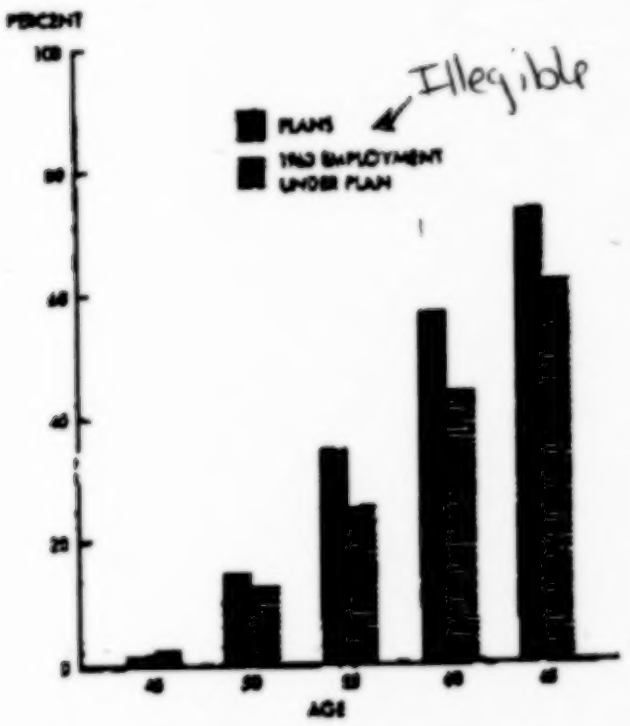
They undoubtedly have an effect upon hiring age limits. Employers in some cases are averse to hiring workers excluded from major fringe benefits. In other situations they are reluctant to provide a reduced and less costly level of fringe benefits. In still other cases they may be reluctance [sic] to provide regular pension benefits if special additional costs would be in involved.

Hiring age exclusions are often lower than pension plan age limits. The lower the established retirement age, the lower the hiring age is likely to be, to allow sufficient time for acquiring pension eligibility and earning an adequate pension. While 65 has been the usual age for normal retirement in most private pension plans as well as in OASDI, there has been some lowering of this age in recent years. In addition, recently negotiated "special early retirement" clauses, which provide higher benefits than "normal" as incentives toward earlier retirement, can accelerate this trend toward earlier retirement, lower further the actual age of retirement, and exert more pressure on maximum hiring ages. In some cases these provisions bar the reentry of workers into certain types of activity, either in the same craft or industry.

The spread of compulsory and automatic retirement provisions has also lowered the age of retirement for many who want to continue to work beyond age 65. About one-third of men retired under OASDI regard their retirement as involuntary, as do about 10 percent of those retired under early retirement plans in recent years, according to Department of Health, Education, and Welfare and Cornell University surveys.

Provisions which enable workers to carry earned pension credits with them to new employment could aid the reemployment of older workers.

CHART 4. A THIRD OF PRIVATE PENSION PLANS EXCLUDED WORKERS HIRED AT AGE 55 AND OVER HALF AT AGE 60.



Source U.S. Department of Labor, Bureau of Labor Statistics

Vesting provisions are found in about 2 out of 3 plans covering 3 out of 5 workers under private pension plans, according to a recent analysis by the Bureau of Labor Statistics. If vested rights from previous employment were added to the pension credits the older worker would earn in his new employment, his pension could be considerably higher than could otherwise be provided without added cost. This or other arrangements to facilitate portability of credits could reduce present employer reluctance to hire older workers.

Vesting would also narrow the present cost advantage that favors younger workers, and which arises partly because younger workers, without vesting and with greater turnover, often forfeit their pension rights.

The extent to which the range of pension plan-induced limitations on employment can be considered to constitute arbitrary discrimination is not a simple matter, particularly in the light of the great variations in plan provisions and employer practice. Case-by-case examination is necessary to separate reasonable from unreasonable practice.

The Consequences of Such Discrimination on the Economy and Individuals Affected

The consequences of discrimination embrace a wide range of production loss, human hardship, and frustrations. This may well include the loss of important innovations in the fields of science and technology. Since our society has by no means yet worked out the role to be played by older workers in their later productive years of life, what remains here is an unmeasured as well as untapped resource.

A. The Consequences to the Economy

It is a fair estimate that a million man-years of productive time are unused each year because of unemployment of workers over 45; and vastly greater

numbers of years are lost because of forced, compulsory, or automatic retirement.

The total costs to the Nation's economy of the combination of factors which underlie discrimination on account of age cannot easily be calculated. Even where the loss is tangible it is possible to make only very rough approximations; moreover, it is difficult to differentiate the effects of discrimination from other influences.

A substantial portion of the unemployment insurance payments of $1 billion a year to workers 45 and over can be attributed to unemployment resulting in one way or another from the fact of the employee's age. Some of these payments, of course, would go to workers who are between jobs even under conditions of full employment; nonetheless, a large but incalculable proportion involves long- duration unemployment that reflects the difficulty which the older worker faces in attempting to find a new job. The Nation loses, furthermore, potential production in an amount at least two or three times the size of the unemployment insurance payments that might be attributable to discrimination.

It is impossible to estimate what proportion of these costs of unemployment insurance and lost production results form "arbitrary" discrimination, of the kind which might be dealt with by a statute prohibiting discrimination in employment on the basis of age.

Only a hypothetical calculation can be made of the potential contributions of those who have retired involuntarily. Such a calculation would easily yield several billion dollars a year on the assumption that the participation rate for males 65 and over (in either paid or voluntary activity) might rise to a point about halfway between the present labor force participation rate (28 percent) and the 1948 rate of 47 percent (less than half the participation rate for lower ages), and that earnings

would not on the average exceed the amounts possible without reduction of OASDI benefits. The fact that about one-third of the men retiring under OASDI regarded their retirement as involuntary – as previously indicated – suggests that these assumptions may not be unreasonable. Moreover, the results of this calculation are similar to those of the late Professor Sumner Slichter who in 1952 estimated $3.8 billion in 1951 prices as a conservative measure of "present loss of production from retired workers."

B. The Consequences to the Individual

The position of the individual older worker, relative to the position of workers in the prime age groups, reflects not only relative disadvantage, but deterioration as well.

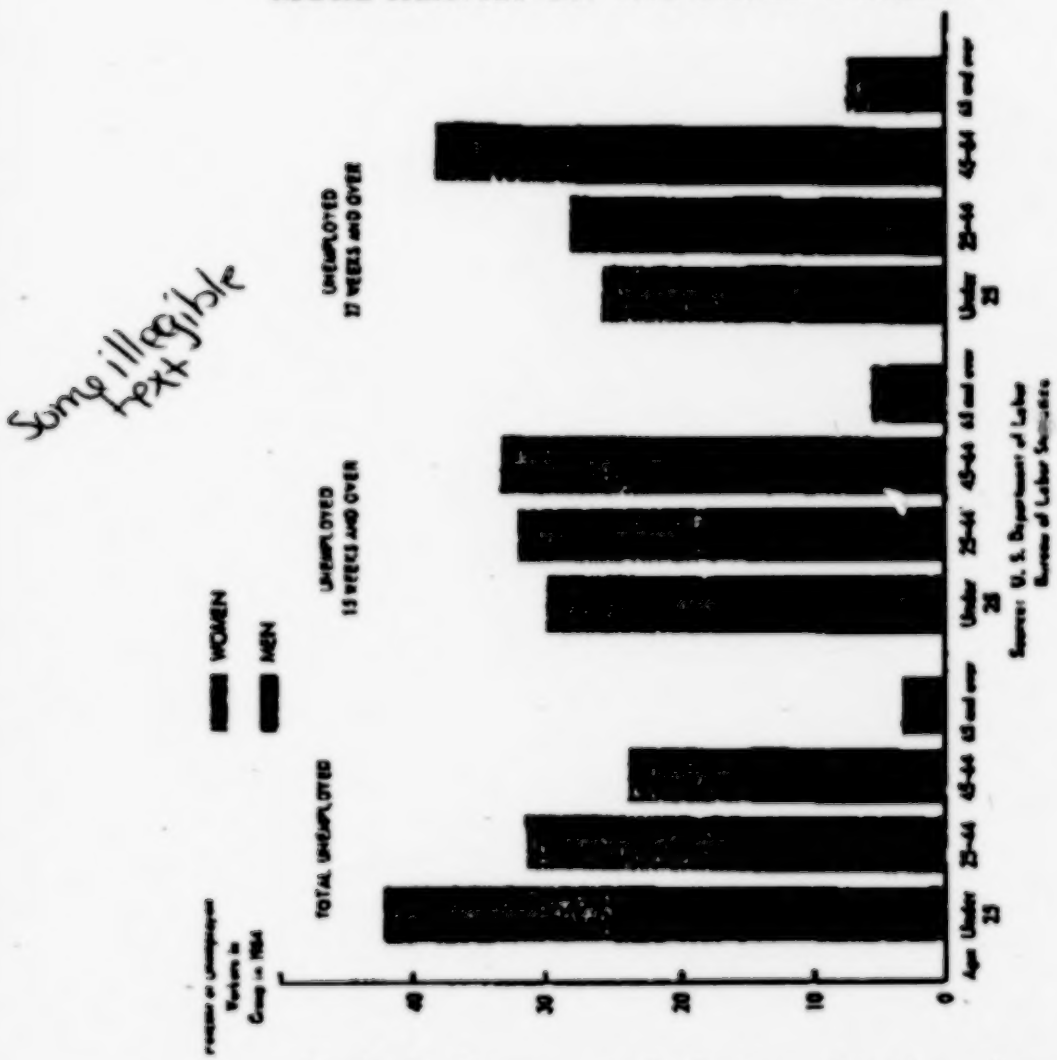
The unemployment rate of male workers 45 and over last year was one-fifth greater than the rate in the 35-44 year group.

Older workers (45 and over) experienced more long-term unemployment than younger groups. (See chart 5.) On the average this unemployment lasted 8 weeks longer – about 75 percent longer – than the average duration of unemployment for workers under 45.

The proportion of the very long-term unemployed (over 27 weeks) made up of men 45 and over has been rising in the face of a generally improved employment situation: from 31.5 percent in 1961 to 33.6 percent in 1964 and has begun to improve only in recent months – a lagging improvement of the kind that has in the past generally characterized the unemployment situation of older workers after each period of downturn or inadequate growth.

This development is often accompanied by another kind of deterioration that cannot be measured – deterioration of skill and motivation, with consequent reduced acceptability to employers.

CHART 5. LONG-TERM UNEMPLOYMENT FALLS MORE HEAVILY ON THE OLDER WORKER



Limited literacy and basic education have inhibited the retraining of older workers under the Manpower Development and Training Act. They are in fact badly underrepresented in such training. While workers 45 and over constitute 27 percent of the unemployed, they represent only 11 percent of MDTA trainees. This situation can be remedied to some extent under the literacy amendments to the act. But it will also

be necessary to overcome the present administrative inhibitions which arise in part from the MDTA requirement concerning prospective employment opportunity.

The consequences of discrimination on the individuals affected go far beyond those attributable to arbitrary refusal to employ on the basis of age.

They show up in widespread uncertainty concerning the role of rigorous older persons in our society, and in personal frustrations and anxieties. While the opportunity to retire with some income has meant leisure and escape from routine for a great many, it has also created new uncertainties, particularly where *opportunity* to retire has been converted into *forced* retirement, and where there is no new opportunity for satisfying occupation.

While the economic situation of retired workers has steadily improved with the increases in retirement benefits, it is still of great concern that almost one-seventh of the Nation's poverty problem involves low-income persons over 65. The vast majority of older persons have virtually no financial assets to supplement their pensions. Many are barely outside the poverty border: over 40 percent of married couples with one member over 65 had incomes in 1962 of less than the $2500 required to meet the budget estimated by the Bureau of Labor Statistics as being "modest but adequate" for a retired elderly couple.

III. Conclusions and Recommendations

It would be the worst misfortune if the problem of age discrimination in employment, having come to the Congress' attention, were posed so narrowly as to result in superficial prescription.

The firmest conclusion from this year long study is that the most serious barriers to the employment of older workers are erected on just enough basis of fact to make

it futile as public policy, and even contrary to the public interest, to conceive of all age restrictions as "arbitrary" and to concentrate on the prohibition of practices which include this element.

A larger, more informed effort is required.

To the extent that arbitrary discrimination occurs, it can and should be stopped.

To the extent that obstacles exist to the employment of older workers because of limitations in their abilities, these abilities must be enlarged.

To the extent that the process of matching men and jobs is working to the disadvantage of older workers, the process must be improved.

To the extent that employment security and income maintenance programs are having a wholly unintended adverse effect on the position of older workers who are unemployed, these programs must be adjusted.

All these things are possible, given a national will and a national effort.

Such an effort will include four types of programs.

First: *Action* to eliminate arbitrary age discrimination in employment.

Second: *Action* to adjust institutional arrangements which work to the disadvantage of older workers.

Third: *Action* to increase the availability of work for older workers.

Fourth: *Action* to enlarge educational concepts and institutions to meet the needs and opportunities of older age.

These recommendations are made pursuant to a Congressional directive that a study be carried out and that the Secretary of Labor report the results of such study and "include in such report such recommendations

for legislation to prevent arbitrary discrimination in employment because of age as he determines advisable." These recommendations derive only from the directive and the study. They do not constitute proposals by the Administration. Their ultimate consideration will necessarily be as part of a broader balancing with other important measures involving other needs.

Action to Eliminate Arbitrary Age Discrimination in Employment

There is persistent and widespread use of age limits in hiring that in a great many cases can be attributed only to arbitrary discrimination against older workers on the basis of age and regardless of ability. The use of these age limits continues despite years of effort to reduce this type of discrimination through studies, information and general education undertaken by the Federal Government and many States, as well as by nonprofit and employer and labor organizations.

The possibility of new *nonstatutory* means of dealing with such arbitrary discrimination has been explored. That area is barren.

State experience with statutes prohibiting discrimination in employment on the basis of age indicates that such practice can be reduced by a well-administered and well-enforced statute, coupled with an educational program. It is clear from this experience that an educational program to promote hiring on the basis of individual merit is far more effective when provided for by statute.

The elimination of arbitrary age limits on employment will proceed much more rapidly if the Federal Government declares, clearly and unequivocally, and implements so far as is practicable, a national policy with respect to hiring on the basis of ability rather than age.

Such implementation should emphasize the role to be played by persuasion and education, both in general and in individual cases of alleged violations of policy, and should provide for action in the event that persuasion and education fail.

Specific provision should be made for handling instances of *alleged* arbitrary discrimination where the facts of the case indicate that the older worker in question needs reeducation, training, counseling, or health and other services. In these cases the individual should be referred to the appropriate programs for needed assistance.

While State laws have been increasing in number, some are not implemented at all, and, with few exceptions, the State resources have been inadequate for assuring effective compliance. Activities on behalf of older workers have had a tendency to become submerged in broader programs to prevent discrimination on account of race, color, or religion.

A clear-cut and implemented Federal policy against arbitrary discrimination in employment on the basis of age would provide a foundation for a much needed vigorous, nationwide campaign to promote hiring on the basis of ability rather than age.

Action to Adjust Institutional Arrangements Which Work to the Disadvantage of Older Workers

To eliminate discrimination in the employment of older workers, it will be necessary not only to deal with overt acts of discrimination, but also to adjust those present employment practices which quite unintentionally lead to age limits in hiring.

This will require special arrangements to overcome employer reluctance to hire qualified workers under present pension and seniority arrangements. It will be necessary to modify some existing arrangements, to encourage new kinds of employer and union actions, and

to explore additional steps to be taken by the Federal Government.

1. The report of the President's Committee on Corporate Pension Funds and Other Private Retirement and Welfare Programs, issued in January 1965, includes a wide range of recommendations for public policy regarding private pension plans. One important recommendation aimed at wider adoption of vesting provisions in private plans would improve employment opportunities for older workers. Another recommendation which would have long range beneficial effects in this regard called for a study of the feasibility of a system of portable pension credits. These proposals should be given prompt and full consideration.

2. New forms of private annuity coverage for older workers not covered by present private pension arrangements should be encouraged, and consideration given to the status of such annuities under the tax laws. Such arrangements could provide annuity coverage in cases where costs inhibit the hiring of older workers, without requiring the modification of the existing pension plan.

3. A comprehensive formal review of the gaps and inadequacies of present systems of workmen's compensation and disability insurance should be undertaken.

4. Methods should be developed for assisting private parties in collective bargaining to work out procedures which would open opportunities for hiring unemployed workers with long industrial service, while protecting the seniority rights of workers who are already employed.

Action to Increase the Availability of Work for Older Workers

The fundamental fact that will determine the situation of the unemployed older worker is the condition of the national economy. So long as there exists a considerable body of unemployed persons, the unemployed older worker will be competing for jobs at a disadvantage. By and large, the hard present facts of education, training, and mobility work to the advantage of younger workers. Full employment comes first in any serious intention to eliminate the disadvantages which unemployed older workers must overcome.

Given a high and expending level of employment, however, a vigorous nationwide employment effort, with new and improved arrangements directed at the needs of older workers, is required to provide the special counseling, training, and placement attention that will lead to job opportunities.

The United States Employment Service and the affiliated State services constitute the basic operating resources for getting this job done. Where concentrated efforts have been made in behalf of older workers, the experience of the Employment Service clearly shows that substantial employment opportunities can be developed. But a fully adequate program will require

-- additional intensive individual counseling and group counseling with specially trained counselors available for older workers, including veterans (many of whom are now in their forties and fifties) and military retirees;

-- the organization of new job-finding community activities, including self- help groups;

-- the development of *part-time* employment opportunities;

-- referral to appropriate retraining projects and basic education courses, or to other facilities and

services such as those provided in the field of vocational rehabilitation or to be provided under the pending Older Americans Act;

-- the organization of community efforts to change employers' attitudes toward rigid age restrictions;

-- intensification of programs for dealing with mass layoffs from plant shutdown, whether related to changes in defense programs or in civilian production.

It will also require, under the Manpower Development and Training Act.

-- larger provision for training and retraining opportunities for older workers, especially through on-the-job training;

-- development of new and more effective methods of training adult workers;

-- more opportunities for basic education and income supplements to make this education practicable.

To achieve all this will call not only for action in new directions but for special leadership and attention to the problems of the older worker at a key point in the administration of the Nation's manpower programs. This should be a matter given special attention in developing the nationwide employment effort.

Labor and management must be relied on to work out techniques to help older workers meet the requirements of new jobs while they are still employed, and thus forestall the likelihood of unemployment. Several specific possibilities were emphasized in the 1962 Automation Report of the President's Advisory Committee on Labor-Management Policy:

-- planning job changes in advance;

-- cooperation between management and employee representatives to meet the problems involved;

-- open reporting to the employees involved;

-- timing of changes to take advantage of expansion and attrition;

-- institution of severance pay programs based on length of service.

Techniques for the advance planning of manpower requirements are being applied in a number of industries, and have been used successfully in several difficult disputes over adjustment to technological change.

Techniques are only beginning to be developed for the redesign of jobs to permit greater numbers of older workers to function effectively and at high levels of productivity.

Techniques are being developed for effective pre-retirement planning which can mean the difference between good and poor adjustment. They encompass financial planning, living arrangements, the managing of money, health problems, and the question of what to do with one's time. They are best carried out at the work location and where possible under joint labor-management sponsorship.

There are many community tasks on which older persons can be employed. There are substantial community needs that have not been met, and for which local authorities do not have funds. A great deal of this work can be done by older workers, and would be if Federal assistance were available in a form similar to the present financing of the Neighborhood Youth Corps. Community work would recapture and preserve human abilities, utilize manpower, provide satisfying occupation, and forestall additions to the mounting welfare case load.

Local communities should be encouraged and assisted to develop employment opportunities in cooperation with private enterprise as well as through public and non-profit agencies. Participation by private enterprise in the administration of parts of the War on Poverty, in connection with the Job Corps camps and work experience projects, and in the on-the-job training programs under the MDTA and President Johnson's Job Development Program, open new horizons for ingenuity and innovation. There are, and are likely to continue to be, however, tens of thousands of workers with inadequate sources of income and no employment prospects, who are over 55, have exhausted unemployment compensation, and are not yet eligible for retirement benefits. It is not right or reasonable that those whom the economy has displaced at ages between 55 and 65 in the course of technical progress, and whom it will not take back into productive employment, should suffer because of the unavailability of work opportunity. A special program to meet the income needs of this limited group should be considered not only on its own merits but to reduce the growing pressure for a costly early retirement system.

Action To Enlarge Educational Concepts and Institutions To Meet the Needs and Opportunities of Older Age

There is a still broader dimension to all this.

The difficulties of being an older worker are only part of the difficulties of being an older person. There has been too narrow an emphasis on "work," too little recognition of the broader concept of "function" – and the difference gets clearer when an individual's time for work is running out but his capacity, and need, to function continue: Part of age discrimination in employment and part of the answer to it involve this relationship between work and function: for it is wrong to

think so much in terms of a person's right or desire to keep on indefinitely at the kind of thing he has always done.

Yet as things now stand, most people's education and their experience are directed largely at what they do during their "lifetime's work" and not at all at what they will do when that work tapers off but a lot of life remains to be lived.

What this study has made clear and this report must convey is the working of two powerful, related, but in a sense opposing processes: men and women are living longer lives than before; but during their lives the world – of ideas, of institutions, of work and function – is changing more rapidly than ever before.

Through most of history, life has been a process of a steadily increasing maturity and growing understanding of the world in which one lives. Suddenly, as life grows longer, the sum total of human knowledge is compounded faster, the pace of technological progress accelerates – and the process of getting older presents the prospect that as an individual ages he or she will become less, rather than more, familiar with the essential facts of life.

In certain profound ways, people today *diminish* during their lives, in understanding. Today's adult finds the grade school mathematics of his children difficult if not impossible to grasp. H. G. Wells described civilization as a race between education and catastrophe. Acknowledging that to fall hopelessly behind events in middle age is indeed a catastrophe, means facing the further fact that more and more persons are losing that race.

If this appears removed from the issue of age discrimination in employment it is necessary to say plainly that most of those who suffer the worst employment disadvantage with their advancing years are

those with the least preparation for the changing demands of those years.

The point has now been reached where almost every boy and girl from age 6 to 16 is in school and a great majority of them finish high school. A much smaller number, about one in four, go on to college, and the evidence is clear that those who do are on the whole well equipped to keep abreast of developments as they go through life. Their education never really stops, or they are at all events able to resume it when necessity or interest indicates that they should do so.

But what about the others, those who leave off their education at high school, or before. The time when a person could, before he was sixteen or eighteen, acquire a set of skills, or ideas, and make do with them for life, is gone. If anything is certain, it is that most of the members of this group, particularly the wage earners, will sooner or later urgently need further education and training. It is almost an iron law of the coming age, or indeed the present age. Yet there are at present only the most limited arrangements available to provide that education and training. The direct needs of American wage earners, and the larger interests of American society, require that bold thought be directed to means by which we can enable persons who did not attend college in their youth to resume their education on meaningful and productive terms later in their life.

A new system of continuing educational opportunity should be developed for achieving better preparation of our older workers for economic and job changes, to make them less vulnerable to displacement, to protect them against discrimination, and to open the way to more satisfying activity in retirement.

-- These opportunities should make it possible for individual workers to receive modern educations which will make up for earlier failure

to complete grade school or high school, and should open opportunity for educational and technical refurbishment.

-- They should include appropriate financial assistance for limited but adequate periods of time. It will be important to explore a variety of methods by which new types of adult education can be woven into work life.

-- The financing of these new opportunities should be a matter of thorough study. Consideration might be given, for instance, to the possibilities of a new system of contributory insurance for educational credits for workers.

A program along these lines, in addition to providing an entirely new horizon of opportunity to those in the work force who are over 45, can also open new job opportunities for others while older workers are on "educational sabbaticals." It can lead to the innovations and economic growth that new combinations of experience and modern education can provide, can furnish a basis for a new type of economic activity, and can be a constructive form of distributing reduced hours of active work in our society. A 1-year educational sabbatical, for example, is roughly the equivalent of a 1-hour reduction in weekly hours over a working life. A 3-month educational sabbatical is equivalent in time to an added coffee break each week of working life.

The basic reply then to the Congress' inquiry about what is required to prevent age discrimination in employment is that there should be provided the opportunity for full *participating* membership in the society until death – and that continuing education is the necessary and only possible qualification for such participation.

All this is not the work of one legislative program, nor of one legislative session, but the time is at hand to

go ahead. "Knowledge comes," Tennyson wrote, "but wisdom lingers." We possess the knowledge in general terms of what must be done. This report is offered in the sincere hope that it will help muster the wisdom to proceed.